APPENDIX

APPENDIX I

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA,
TALLAHASSE DIVISION

No. 565

FLORIDA CITRUS COMMISSION, et al., *Plaintiffs,*

and

EZRA TAFT BENSON, Secretary of Agriculture, et al.,
Intervening Plaintiffs,

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al., *Defendants,*

and

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, ARMOUR AND COMPANY, et al., *Intervening Defendants.*

Before JONES, Circuit Judge, and BARKER and DEVANE, District Judges.

JONES, Circuit Judge.

The Interstate Commerce Commission entered its order dated January 9, 1956, on the petition of substantially all of the rail carriers of the country, permitting increases in refrigeration charges to the extent authorized in the Commission's report of the same date. 297 I.C.C. 505. This action is brought to enjoin, annul and set aside the Commission's order under the provisions of the Judicial Code (28 U.S.C.A. §§ 1336, 1337, 1398, 2284, 2321, 2322 and 2325) and by the Administrative Procedure Act. 5 U.S.C.A. § 1009. The action was brought by shippers and representatives of shippers of fresh fruits and vegetables in and from Florida and two agencies of the State of Florida, the Florida Citrus Commission, a body corporate (Florida

Statutes 1955, § 595.01 et seq.) and Florida Railroad and Public Utilities Commission, an unincorporated regulatory agency exercising quasi-judicial powers. Florida Statutes 1955, § 350.01 et seq. By intervention, Western Growers Association, a trade association of growers and shippers of melons and vegetables in and from Arizona and California, California Citrus League, a trade association of growers and shippers of citrus fruits in and from Arizona and California, and Ezra Taft Benson, Secretary of Agriculture, became parties plaintiff.

The charges made by rail carriers for refrigeration services are separate from the so-called line-haul rates. 49 U.S.C.A. § 6(1). The charges for refrigeration services are prescribed by the Interstate Commerce Commission or established by the rail lines. They are set forth in the published tariffs of W. T. Jamison, agent for the railroads. The refrigeration charges, for the most part, are of two basic groups, one known as Section 2 charges and the other being Section 4 charges. The designations come from the numbering of the sections of Agent Jamison's tariffs where the charges are scheduled. Generally speaking, Section 2 charges apply in the transportation by rail of fresh fruits, vegetables, melons, berries and processed foods. The commodities to which Section 4 charges are applicable include fresh meats and packing house products, fish, dairy products, bananas, coconuts and beer. Section 2 charges are based, or intended to be based, upon cost of ice in bunkers, supervision, switching to and from icing stations, damage to bunkers and cars, ice haulage in bunkers, accounting, hazard, taxes, and a return on investment. Section 4 charges are intended to include only cost of ice, salt and switching. Shippers using Section 4 services have urged that the carriers are compensated for the Section 2 costs not included in Section 4 charges in the line-haul rates on Section 4 commodities. A number of types of refrigeration services are available in order to provide for the different needs of shippers of various commodities from and to diverse points of origin and destination.

During the period of 1946 to 1951, inclusive, the Interstate Commerce Commission authorized increases in refrigeration charges aggregating 32.25 per cent. Ex Parte No. 162, Increased Railway Rates, Fares and Charges, 1946, 266 I.C.C. 537; Ex Parte No. 166, Increased Freight Rates, 1947, 270 I.C.C. 403. During the same period the Commission, in "general revenue" proceedings, authorized increases of interstate freight rates to the extent of 78.9 per cent. Ex Parte No. 162, Increased Railway Rates, Fares and Charges, 1946 *supra;* Ex Parte No. 166, Increased Freight Rates, 1947, *supra;* Ex Parte No. 168, Increased Freight Rates, 1948, 276 I.C.C. 9; Ex Parte No. 175, Increased Freight Rates, 1951, 281 I.C.C. 557. A recent order allows a further freight rate increase of 6 per cent. Ex Parte No. 196, Increased Freight Rates, 1956, — I.C.C. —. In Ex Parte No. 168, and again in Ex Parte No. 175, the Commission found the evidence inadequate to show that existing charges did not compensate the carriers for their costs in furnishing refrigerating services. In 1951 the rail carriers decided to conduct a survey to ascertain the costs of refrigeration services as a basis for determining whether an increase in charges could be justified. The method of making the survey and the results obtained from it need not be here recited beyond the extent required for our determination of the questions before us. They are fully detailed in the report of the Commission. The rail lines, basing their conclusion on a report of the survey, estimated that Section 2 refrigeration costs exceeded revenues by 29.8 per cent.

The rail carriers, by their petition filed with the Interstate Commerce Commission, sought increases of 30 per cent., with some exceptions, of the Section 2 charges, and specific increases for the charges for ice, salt and switching in the Section 4 charges. In their petition the carriers asserted that their cost studies showed that on the basis of 1951 figures, the cost of refrigeration services was more than $12,000,000 in excess of the revenues from such serv-

ices. All of the interests before the Court were represented in the proceedings before the Commission. The Commission held numerous hearings at various places, built up a large record of testimony and exhibits, a report was proposed by the Examiner, exceptions to the proposed report were filed, briefs were submitted, and oral argument was heard by the full Commission on three different days.

In its report the Commission found that the carriers were sustaining a deficit of 23 per cent. of their refrigeration charge revenue from Section 2 traffic, and an ice cost of approximately 17 per cent. in excess of revenue on Section 4 shipments. But, finding that a substantial portion of the affected traffic could not bear increases to the extent required to fully cover costs of service, the Commission authorized increases of 15 per cent in the basic refrigeration charges. Petitions for Reconsideration were filed with the Commission, and while these petitions were pending this suit was instituted. The Commission denied the Petitions for Reconsideration on April 16, 1956, and, this Court meanwhile having declined a stay, the increases became effective April 17, 1956.

At the outset we are met with the contention that no order was issued under Section 15(1) of the Interstate Commerce Act, (49 U.S.C.A. § 15(1)), and that no notice was given under Section 4(a) of the Administrative Procedure Act, (5 U.S.C.A. § 1003(a)), which relates to rule making by administrative agencies. More nearly pertinent, we think, is Section 5(a) of the Administrative Procedure Act, (5 U.S.C.A. § 1004(a)), providing for notice of agency hearings. Wherever it appears that the absence of notice has resulted in prejudice to a complaining party the action of the administrative agency will be set aside. Pinkett v. United States, D. C. Md. 1952, 105 F. Supp. 67. But no prejudice is shown where, as in this case, the party complaining had actual knowledge of and participated in the administrative proceedings and he will not be heard to complain of the failure to give formal notice. W. J. Dillner

Transfer Co. v. United States, D.C.W.D. Pa. 1951, 101 F. Supp. 506; C. E. Hall & Sons, Inc. v. United States, D.C. Mass. 1950, 88 F. Supp. 596. We think it doubtful that the hearings of the Commission in the proceeding we here consider were of the kind contemplated by the section of the Interstate Commerce Act requiring notice, but the absence of any showing of prejudice relieves us of the necessity to decide the point.

By the enactment of the Emergency Transportation Act, 1933, 48 Stat. 211; 49 U.S.C.A. § 15(a)(2), the Congress gave to the Interstate Commerce Commission the power and imposed the duty to adjust rates so that carriers as a whole, or in each of such rate groups or territories as the Commission might designate, will earn an aggregate net operating income equal to a fair return upon the aggregate value of the railway property of the carriers used in transportation service. Under the provisions of Section 13 of the Commerce Act, 49 U.S.C.A. § 13(1), "any person, firm, corporation, company, or association, or any mercantile, agricultural, or manufacturing society or other organization, or any body politic or municipal organization", within which inclusive descriptions each plaintiff may find a designation, may petition the Commission and complain of anything done or omitted by any common carrier subject to the Act in contravention of the provisions of the Act. By Section 15, 49 U.S.C.A. § 15(1), the Commission is empowered, upon a complaint or on its own initiative, to determine whether any individual or joint rate, fare or charge is or will be unjust, unreasonable or unjustly discriminatory, and may determine and prescribe just and reasonable rates, fares and charges. Under Section 15(a) and the implementing provisions of the Act, the Commission has exercised jurisdiction in a number of proceedings which have been commonly called "general revenue" cases, where revision has been sought as to all or substantially all of the rates or charges on all traffic or on particular commodities or groups of commodities, either nation wide or in a large

territory, in contradistinction to the "rate" cases, so called, in which the reasonableness of specific rates has been determined. Among the first, and perhaps the earliest of the court decisions dealing with a general revenue case, is the leading Algoma case. Algoma Coal & Coke Co. v. United States, D.C.E.D. Va. 1935, 11 F. 2d 487.

In the Algoma case, producers and shippers of coal sought the annulment of rate increases on that commodity, which increases had been made effective pursuant to an order of the Commission authorizing rate increases on a selective basis. Emergency Freight Charges, 1935, Ex Parte No. 115, in the Matter of Increases in Freight Rates and Charges, 1935, 208 I.C.C. 4. In a frequently cited and well reasoned opinion by District Judge Chestnut, it was held that the plaintiffs could not prevail. The suit was dismissed. The Court said:

> "The plaintiffs have mistaken their remedy in the statutory scheme of railroad rate making. Their contention is that the Commission, without sufficient evidence or proper findings of fact, has determined or fixed particular rates for the plaintiffs' particular traffic. But this misconceives what the Commission has actually done. It was not dealing finally with particular rates for particular traffic, but permitting increased rates for selected commodities, by a general order affecting all the railroads in the country. If the increased rates as applied to the plaintiffs' particular situation can be shown to be unjust and unreasonable, their remedy is clearly by proceedings under Sections 13 and 15 of the act (49 USCA §§ 13, 15) for individual relief, and for reparation orders under section 16(1) of the act, 49 USCA § 16(1). Brimstone R. & Canal Co. v. United States, 276 U.S. 104, 122, 48 S. Ct. 282, 72 L. Ed. 487; Alexander Sprunt & Son v. United States, 281 U.S. 249, 256, 50 S. Ct. 315, 74 L.Ed. 832; Eagle Cotton Oil Co. v. Southern Ry. Co. (C.C.A. 5) 51 F. (2d) 443, certiorari denied 284 U.S. 675, 52 S. Ct. 130, 76 L. Ed. 571. Nothing in the Commission case debars them from such relief. Counsel for the railroad companies before the Commission and in this

court proceeding concede that the rule of Arizona Grocery Co. v. Atchison, T. & S. F. Ry. Co., 284 U.S. 370, 52 S. Ct. 183, 76 L. Ed. 348, would not be available to defeat the plaintiffs' remedy in this respect before the Commission, upon a proper showing.

"It is necessarily inconsistent with the whole scheme of the Interstate Commerce Act, which requires uniformity and nondiscrimination as to rates, to permit particular shippers to obtain individual relief in courts of different jurisdictions, with possible lack of uniformity in results, in matters committed to the administrative functions of the Commission, including the reasonableness of rates, until after the Commission has acted on the particular subject. Texas & Pac. Ry. Co. v. Abilene Cotton Oil Co., 204 U.S. 426, 27 S. Ct. 350, 51 L. Ed. 553, 9 Ann. Cas. 1075; Baltimore & O. R. Co. v. United States ex rel. Pitcairn Coal Co., 215 U.S. 481, 30 S. Ct. 164, 54 L. Ed. 292; Great Northern Ry. Co. v. Merchants' Elevator Co., 259 U.S. 285, 291, 42 S. Ct. 447, 66 L. Ed. 943. Consistently therewith, it has been held by the Supreme Court in a number of cases, that individual shippers may not maintain suits to annul orders of the Commission unless they can show an invasion thereby of some independent legal right, whereby they particularly are subjected to injury. Alexander Sprunt & Son v. United States, 281 U.S. 249, 256, 50 S. Ct. 315, 74 L. Ed. 832; United States v. Merchants' & Manufacturers' Traffic Ass'n of Sacramento, 242 U.S. 178, 37 S. Ct. 24, 61 L. Ed. 233; Edward Hines Yellow Pine Trustees v. United States, 263 U.S. 143, 44 S. Ct. 72, 68 L. Ed. 216." Algoma Coal & Coke Co., et al. v. United States, 11 F. Supp. 487.

The plaintiffs and intervening plaintiffs, other than the Secretary of Agriculture, assert that there is considerable doubt as to the correctness of the rulings in Algoma. They do not support their doubt with either a statement of a contravening principle or the citation of any authority superseding it as a precedent. The Secretary of Agriculture, with commendable candor, says that the Algoma case is "still the law of the land on the subject". On a number

of grounds it is urged that the case before us is not a general revenue case, but a rate case, and as such the charges authorized by it are unjust, unreasonable and discriminatory. It is further contended that even if it be decided that this is a general revenue case, there is no competent evidence of any need of additional revenue by the carriers. Unless the order is based upon a misconstruction of the Act or is unsupported by substantial evidence, it is entitled to a presumption of validity. 5 U.S.C.A. § 1099; Baltimore & Ohio Railroad Co. v. United States, 298 U.S. 349, 56 S. Ct. 797, 80 L. Ed. 1209; Amarillo-Borger Express, Inc. v. United States, D.C.N.D. Tex., 1956, 138 F. Supp. 411. It has been said by the Supreme Court, "Judicial review of the findings of fact and the expert judgments of the Interstate Commerce Commission where the Commission acts within its statutory authority is extremely limited." Interstate Commerce Commission v. Mechling, 330 U.S. 567, 67 S. Ct. 894, 91 L. Ed. 1102. See also Atchison, Topeka and Santa Fe Railway Co. v. United States, 232 U.S. 199, 34 S. Ct. 291, 58 L. Ed. 568; United States v. Chicago Heights Trucking Co., 310 U.S. 344, 60 S. Ct. 931, 84 L. Ed. 1243; Ontario Freight Lines Corporation v. United States, D.C.N.J. 1948, 76 F. Supp. 526. With these general guides we approach the questions so ably presented by contending counsel.

In the opinion in the Algoma case, *supra,* the Court observed that the order of the Commission there under review was permissive in character, that it prescribed no particular rates, that the lawfulness of individual proposals was not passed upon, and that it was open to the plaintiffs, under Sections 13 and 15 of the Act, 49 U.S.C.A. §§ 13, 15, to present to the Commission their contentions that particular rates initiated pursuant to its order were unreasonable and discriminatory. In Algoma it was also pointed out that the resulting rates fixed pursuant to the Commission's order would be subject to complaint and a

determination of reasonableness, and that the Commission's order would not debar the right to reparations in a proper case. The plaintiffs contend that the Car Unloading Case, Secretary of Agriculture v. United States, 347 U.S. 645, 74 S. Ct. 826, 98 L. Ed. 1015, is a controlling precedent for the position they take. There the Commission had entered an order approving maximum charges for the unloading by railroads of carload shipments of fruit and vegetables at the rail terminals in New York and Philadelphia. The Supreme Court, reversing the District Court of the Southern District of Florida, held that as a general rule line-haul rates included the making of the goods accessible to the consignee and that the commission had failed to show a legal basis for departing from this general rule although a majority of the Court was of the opinion that the Commission had the power in a proper case to fix unloading charges separate from the line-haul rates. We do not have here any such factual situation as was presented in the Car Unloading Case. It is not disputed that refrigeration charges may be made separately from line-haul rates. In the case before us it is suggested that the line-haul rates on Section 4 traffic include some of the elements that are in the refrigeration charges applicable to Section 2 shipments, but it would not follow from this that we are dealing with a rate case rather than a general revenue case.

As in the Algoma case, the Commission's order is permissive, no particular charges are fixed, and the lawfulness of particular charges was not considered or decided. In its order the Commission said that:

> "* * * to enable the petitioning carriers, under honest, economical, and efficient management, to provide adequate refrigeration service and specifically to meet increased costs of rendering that service, the basic refrigeration charges may be increased as herein specified, and that the charges so increased will be just and reasonable for the future." 297 I.C.C. 554.

It omitted from its order any provision for modification in specific situations as was done in the order considered in King v. United States, 344 U.S. 254, 73 S. Ct. 259, 97 L. Ed. 301. We are urged to say that this inclusion and this omission make the case one fixing rates rather than authorizing a general revenue increase. The Commission's power, whether to fix specific rates or charges or to authorize a general increase of rates or charges, does not, of course, extend to the fixing or authorizing of an unjust or unreasonable rate or charge, and putting the quoted words in their context in a general order, they mean no more than that the overall general increases as authorized will be just and reasonable. Such a finding does not preclude the making of applications to the Commission on any claim that a particular charge is unjust or unreasonable. Nor does the omission of a saving clause, such as was in the order considered in King v. United States, *supra*, preclude the making of such applications or alter the duty of the Commission to consider and decide such applications. The right to apply and the duty to decide have been given by the Congress in Sections 13 and 15 of the Act. The Commission has not, and indeed could not, foreclose the right or renounce the duty in an order authorizing general increases in transportation rates or charges. The Commission has said that its "sanction of a general adjustment does not carry with it the approval of any particular rate." Steel & Tube Co. v. Director General, 61 I.C.C. 526. This decision has had the approval of the Supreme Court in Brimstone Railroad & Canal Co. v. United States, 276 U.S. 104, 48 S. Ct. 282, 72 L. Ed. 487, and of the Court of Appeals for the Fifth Circuit in Eagle Cotton Co. v. Southern Railway Co., 51 F. 2d 443. In its order the Commission suggested that:

> "After the establishment of the increases herein authorized, the petitioners (rail carriers) should conduct thorough and comprehensive studies that will permit sound determinations as to the effect of in-

> creases upon the movement of traffic, and as to any inequities or improper relations that may have developed from changed conditions since their original establishment." 297 I.C.C. 554.

This language indicates a recognition by the Commission of its continuing duty to determine and prescribe just and reasonable individual rates and charges notwithstanding the entry by it of a general order authorizing increases.

We see nothing to prevent this case from being governed by the same rules as are applied in general revenue cases by the styling of the proceeding before the Commission as "Proposed Increased Refrigeration Charges", rather than the "Ex Parte" designation usually given to such proceedings. No different principles are to be applied in this, a general revenue case where revenues are intended to be no more than compensatory, than in the general revenue cases involving line-haul rates where revenues are expected to include profits.

We come now to the contention of the plaintiffs that if we should hold this to be a case governed by the doctrines of the general revenue cases, and we do so hold, nevertheless the evidence does not show nor the findings support the Commission's conclusions or warrant the entry of its order. The evidence, for the most part, was obtained by means of the traffic study made on behalf of the carriers. In the making of the study, data were accumulated from a large number of icing stations under procedures designed to obtain a sample of approximately 10 per cent. of shipments under standard refrigeration moving under Section 2 tariffs. The methods used in the study are recited at length and in detail in the Report of the Commission. They need not be set forth here. It is enough that we say that the evidence submitted was of a kind and quantity sufficient to permit a generalization upon which findings could be based and conclusions drawn. The Supreme Court of

the United States has approved basing findings on such evidence, saying:

> "When an investigation involves shipments from and to many places under varying conditions, typical instances justify general findings. * * * To require specific evidence and separate adjudication in respect to each would be tantamount to denying the possibility of granting relief." Georgia Public Service Commission v. United States, 283 U.S. 765, 51 S. Ct. 619, 75 L. Ed. 1397.

We are unpersuaded that the factors used in the study were not such as reflected existing conditions and, this being so, it is not a part of our function to review the determination based thereon. As said by the Supreme Court:

> "It is not our province to inquire into the soundness of the Commission's reasoning, the wisdom of its decisions or the consistency of its conclusions with those reached in similar cases." Georgia Public Service Commission v. United States, *supra.*

The Commission found a vast multitude of specific facts, it made an ultimate finding that the rail carriers were "sustaining a total deficit exceeding 23 per cent. of the aggregate revenue accruing from the rendition of their refrigeration services". Because of the increasing diversion of this type of traffic from railroads to trucks, because of instances where increased charges would keep goods from shipment to markets, and other considerations, the Commission found "that an increase in the specified refrigeration charges in excess of 15 per cent. is not justified by the indicated circumstances". The Commission concluded that to enable the carriers, "under honest, economical, and efficient management, to provide adequate refrigeration service and specifically to meet increased costs of rendering that service, the basic refrigeration charges may be increased as herein specified, and that the charges so

increased will be just and reasonable for the future". The findings are supported by substantial evidence and afford an adequate basis for the Commission's conclusions.

It is strongly insisted by the plaintiffs that the differences in the treatment accorded by the Commission's order with respect to Section 2 charges on the one hand and Section 4 charges on the other result in unlawful discrimination against and unjust treatment of the users of Section 2 services. It is true that Section 4 charges reflect only the cost of ice and salt, and the cost of switching, while Section 2 charges include also ice haulage, bunker damage, supervision and other elements. If there be any discrimination between Section 2 and Section 4 traffic, and this we do not decide, it is a discrimination which existed prior to the proceedings before the Commission whence issued the order under attack. Such discrimination, if any there be, did not result from nor was it substantially altered by the Commission's order. Whether there be an unjust discrimination is a question for the Commission. The Commission has found that the Section 2 charges and the Section 4 charges do not apply to like traffic and that no showing is made of any disadvantage or injury to Section 2 traffic or the shippers thereof. "In these circumstances", the Commission found, "any existing deficiency in the Section 4 charges does not relieve Section 2 traffic of the responsibility of bearing the full cost of that service and is not a consideration in the determination of the lawfulness of the increase proposed in the Section 2 charges". The finding is supported by the evidence. Differences in rates and charges as affecting different classes of non-competing shippers or consignees are not per se unjustly discriminatory. We find ourselves in accord with the Commission's position. See Board of Trade v. United States, 314 U.S. 534, 62 S. Ct. 366, 86 L. Ed. 432, reh. den. 315 U.S. 826, 62 S. Ct. 621, 86 L. Ed. 1222.

On the theory that we have under review a rate case rather than a revenue case, the plaintiffs assert they will

have no opportunity for redress from the discriminatory effects of the increases in the charges as applied to specific situations unless we set aside the Commission's order. But, it appears, the plaintiffs in this case as in Algoma Coal & Coke Co. v. United States, *supra*, and in Koppers Company v. United States, D.C.W.D. Pa. 1955, 132 F. Supp. 159, have mistaken their remedy. The situation in the latter case is so nearly parallel to that before us and the opinion of the Court so expressive of our views, we quote at some length from it. There it is said:

> "Plaintiff's suit before this court seeks to have the court direct the Commission to grant the relief sought in plaintiff's petition for reconsideration initially filed before the Commission, which is to require the southern carriers to maintain the same rate on transportation of coal from the southern mines to Hampton Roads ports for subsequent transshipment by water, whether the ultimate destination is the plaintiff's plant at Seaboard, New Jersey, or its competitors located at New England ports.
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> "The crucial issue, therefore, is whether this court may set aside and annul a permissive order entered by the Commission when plaintiff has failed to exhaust his remedy under Sections 13 and 15 of the Interstate Commerce Act, but has interceded as an intervenor for reconsideration and modification of the Commission's findings.
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> "In the case of a permissive order, the carrier is the only necessary party to the proceeding. The Commission represents the public. While it is proper and customary for shippers interested to participate in hearings, there exists no provision for notice to them. They are not bound by the order entered and the tariffs filed. If the rates made by tariffs filed under the authority granted seem to them unreasonable, or unjustly discriminatory, Sections 13 and 15 afford ample remedy. To permit shippers to seek redress for such grievances in the courts would invade and

often nullify the administrative authority vested in the Commission. The attempt of the court to remove some alleged unjust discrimination might result in creating more. United States v. Merchants' & Manufacturers' Traffic Association, 1916, 242 U.S. 178, 37 S. Ct. 24, 61 L. Ed. 233.

"Sections 13 and 15 of the Act speak with clarity, and explicitly specify the procedure which complainants must pursue before the Commission in order to seek redress of grievances.

"The plaintiff has mistaken its remedy in the statutory scheme of railroad rate making. Its contention is that the Commission, without sufficient evidence or proper findings of fact, has determined or fixed particular rates for the plaintiff's particular traffic. But this misconceives what the Commission has actually done. It was not dealing finally with particular rates for particular traffic, but permitting increased rates for selected commodities, by a general order affecting all the railroads in the country.

"If the increased rates as applied to the plaintiff's particular situation can be shown to be unjust and unreasonable, its remedy is clearly by proceedings under Sections 13 and 15 of the Act for individual relief, and for reparation orders under the Act of Congress. 49 U.S.C.A. § 16(1); Brimstone R. & Canal Co. v. United States, 1928, 276 U.S. 104, 48 S. Ct. 282, 72 L. Ed. 487; Alexander Sprunt & Son v. United States, 1930, 281 U.S. 249, 50 S. Ct. 315, 74 L. Ed. 832; Eagle Cotton Oil Co. v. Southern R. Co., 5 Cir. 51 F. 2d 443, certiorari denied, 1931, 284 U.S. 675, 52 S. Ct. 130, 76 L. Ed. 571; Algoma Coal & Coke Co. v. United States, D.C. E.D. Va. 1935, 11 F. Supp. 487. The plaintiff must proceed to exhaust its administrative remedies by challenging the rates filed by the railroads pursuant to the authorization granted it by the Commission in the ex parte proceeding.

* * * * *

"It is not for this court to tinker with the delicate and fragile machinery of rate fixing and rate apportionment until the administrative process has been

> meticulously and stringently followed and exhausted in accordance with statutory requirement. The Commission must be afforded every available opportunity to utilize its vast reservoir of knowledge, experience, and know-how—in a proceeding wherein an unequivocal compliance with Sections 13 and 15 has been made with a complaint filed and defendant or defendants served, and clear-cut adversary contests evaluated and conclusively ruled upon, before the arm of the court should intercede upon the merits." Koppers Company v. United States, *supra.*

It has been settled that the Interstate Commerce Commission is without power to award reparations with respect to shipments which moved under rates approved or prescribed by it. Arizona Grocery Co. v. Atchison, Topeka & Santa Fe Railway Co., 284 U.S. 370, 52 S. Ct. 183, 76 L. Ed. 348. Cf. Atlantic Coast Line Railroad Co. v. State of Florida, 295 U.S. 301, 55 S. Ct. 713, 79 L. Ed. 1451. But this rule has no application under the permissive provisions of an order in a general revenue case such as is this case. Supported by substantial authority it was held in the Algoma case, "If the increased rates as applied to the plaintiffs' particular situation can be shown to be unjust and unreasonable, their remedy is clearly by proceedings under Sections 13 and 15 of the Act (49 U.S.C.A. §§ 13, 15) for individual relief and for reparation orders under Section 16(1) of the Act, 49 U.S.C.A. § 16(1). (Citing cases) Nothing in the Commission case debars them from such relief." This, we think, as expressed by the Secretary of Agriculture, is the law of the land, and it is applicable to the instant case.

Other questions are posed by plaintiffs. These have been considered and found to be without merit or inapplicable here. Adding to the length of this opinion by a discussion of them would not serve a useful purpose. For the reasons herein given the relief sought must be denied and the com-

plaints must be dismissed. An appropriate order will be entered.

/s/ WARREN L. JONES
Warren L. Jones
United States Circuit Judge

/s/ WILLIAM J. BARKER
William J. Barker
United States District Judge

DEVANE, District Judge, concurring specially:

The legal line separating North Carolina v. United States, 325 U.S. 507, and similar cases on the one hand, and King et al v. United States, 344 U.S. 254, and other like cases on the other hand is so thin it is sometimes difficult to follow. This is such a case.

I agree with my associates that this is a revenue case and not a rate case, and that the Commission had sufficient information before it to support an appropriate general order applicable in such cases—in fact, the evidence is insufficient to support any other kind of order.

I also agree with much said by Commissioner Clarke in his dissenting opinion, particularly with his statement that flat percentage increases in this case "results in increasing charges which are already equal to or above total costs, and overcharging certain commodities, or certain movements, or certain types of service may be moved at a loss." The answer to this criticism, however, is ably made in Judge Jones' opinion, in which he points out that the variations in the rates prescribed for Section 2 commodities as compared with Section 4 commodities has been in effect for many years and is not the result of this case. All this case does is to increase the discrimination a little more.

The troublesome question to me in the case is the failure of the Commission's order to provide, as it has provided in other similar cases (see King et al v. United States et al,

supra), that if the parties affected are entitled to relief insofar as any specific rates are concerned, they may take their cases to the Interstate Commerce Commission and there secure the relief to which they are entitled. That provision is to be found in most if not all prior general revenue orders heretofore entered by the Commission. It does not appear in this case. However, I agree with Judge Jones that the failure to incorporate it in the opinion or order in this case has no legal effect on the rights of the parties to be heard. If the Commission holds otherwise, then the case will have processed under administrative procedure to a point where the court will be in a position to deal with the issue. It is clear to me that this case has not been processed administratively to a point where the court may rule upon the lawfulness of the rates prescribed in this general order. Comp. Myers v. Bethlehem Corp., 303 U.S. 41 Text 50-51.

/s/ Dozier A. DeVane
Dozier A. DeVane
United States District Judge

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No. 565

FLORIDA CITRUS COMMISSION, et al., *Plaintiffs,*

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ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, ARMOUR AND COMPANY, et al., *Intervening Defendants.*

Order

This cause having been considered by the Court consisting of the undersigned Judges convened pursuant to law, upon the pleadings and evidence and the briefs and argument of counsel, and the Court being advised, it is

ORDERED that the relief sought by the plaintiffs and the intervening plaintiffs herein should be and is hereby denied and the complaints herein filed and this cause are hereby dismissed.

DONE AND ORDERED this 7th day of September, 1956.

/s/ WARREN L. JONES
United States Circuit Judge

/s/ WILLIAM J. BARKER
United States District Judge
/s/ DOZIER A. DEVANE
United States District Judge

INTERSTATE COMMERCE COMMISSION

No. 31342

PROPOSED INCREASED REFRIGERATION CHARGES

Decided January 9, 1956

Upon petition of rail carriers for authority to increase their refrigeration charges throughout the United States, just and reasonable increases authorized.

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Report of the Commission

By the Commission:

Exceptions to the report proposed by the examiner were filed by the petitioners and the protestants generally, and we have heard the parties in oral argument. Exceptions and requested findings not discussed in this report nor reflected in our findings or conclusions have been considered and found not justified.

By a petition filed on August 31, 1953, as amended at the hearing, practically all of the railroads of the country, herein collectively termed petitioners, ask the Commission to authorize increases in their

refrigeration charges and modify all outstanding orders so that increases may be made effective. Hearings were held on the petition. It is opposed by a great majority of the Nation's shippers[1] of commodities that would be affected by such increases, hereinafter sometimes called protestants.

Appendix A hereto shows, in detail, the increases proposed by the petitioners. Generally, the proposal is to increase by 30 percent, with the exceptions indicated in appendix A, the charges published in section 2 of Agent Jamison's perishable protective tariff I. C. C. No. 31, hereinafter called section 2 charges, and those provided in other sections thereof that are based thereon, and to increase by specified amounts the charges published in section 4 of the same tariff, hereinafter called section 4 charges. As indicated in appendix A, no increase is sought in the charges provided in the several rules therein enumerated.

The section 2 charges apply generally for refrigeration services in connection with the movement of fresh fruits and vegetables, berries, melons, and processed foods moving under refrigeration, while those provided in section 4 embrace all other commodities. Typical of the commodities ordinarily transported subject to the section 4 charges are bananas, coconuts, beer, dairy products, fish, fresh meats, and packinghouse products.

The present charges, exclusive of general increases authorized, include those prescribed by the Commission in *Refrigeration Charges on Fruits, etc., from the South*, 151 I. C. C. 649 (February 12, 1929) and 172 I. C. C. 3 (February 3, 1931), hereinafter referred to as the first prior proceeding; *Charges for Protective Service to Perishable Freight*, 215 I. C. C. 684 (June 2, 1936), 241 I. C. C. 503 (October 1, 1940), and 253 I. C. C. 351 (September 8, 1942), hereinafter referred to as the second prior proceeding; *Half Stage Refrigeration Service*, 256 I. C. C. 213 (August 31, 1943); and those voluntarily established by the carriers. The prescribed charges were predicated on the determination that they should be sufficient to cover the cost thereof plus

[1] Shippers and groups of shippers actively opposing the proposed increase include the following: Growers and Shippers League of Florida; Florida Citrus Commission; Florida Canners Association; Florida Citrus Mutual; Florida Fruit and Vegetable Association; F. H. Vahlsing, Inc., of Texas; Texas Citrus and Vegetable Growers & Shippers; California Citrus League; Western Growers Association; Northwest Horticultural Council; Washington Potatoe and Onion Shippers Association; Idaho Shippers Association, Inc.; Idaho State Grange; Idaho Horticultural Society; Idaho Potato Producers Association; International Apple Association; United Fresh Fruit and Vegetable Association; National Association of Fruit Packers; Fairmont Foods Company; General Foods Corp.; The Great Atlantic & Pacific Tea Company; Stokely Van Camp, Inc.; National Fisheries Institute, Inc.; Northwest Fish Traffic Committee; Booth Fisheries Company; Armour & Company; The Cudahy Company; Emmert Packing Company; George A. Hormel & Company; Henry Fisher Packing Company; John Morrell & Company; Kingan & Company; Louisville Provision Company; Oscar Mayer & Company; Rath Packing Company; Swift & Company; and Wilson & Company.

a fair return on the investment in facilities required for the performance of the services. Being accessorial to the basic line-haul service, these charges were prescribed as exact charges, necessary to cover the additional cost incurred by the carriers in performing the services. Also set forth were unit costs of the several elements [2] that had been recognized as contributing to the cost of rendering refrigeration service, in connection with which it was concluded that the application of such of those unit costs as might be pertinent to the particular class of service used would indicate the proper charge. The prescribed section 2 charges are predicated on those elements, which will be discussed hereinafter in more detail. The present section 4 charges include only the elements of ice, salt, and switching. As indicated by the exceptions enumerated in appendix A hereto, no increase is sought in the charges for hazard and repairs of damage to the bunkers and bodies of cars.

There are numerous types of refrigeration services available to the shippers of perishable commodities, the maximal being standard refrigeration with re-icing to capacity of the bunkers at all regular re-icing stations en route. Illustrative of the lesser, or so-called modified, services are those provided in tariff rules Nos. 239, 240, 242, 243, 245, 247, 248, 249, 251, 252, 254, 255, and 258. The inherent nature of the commodity, the market to which it is consigned, and the time of movement are the principal factors which influence the choice of the particular type of service used.

Appendix B hereto lists some of the principal types of the various refrigeration services provided in the perishable protective tariff. In addition to the charges for icing or re-icing to capacity of bunkers as provided in each of the various rules covering bunker icing services, the tariff also provides charges for corresponding half-stage refrigeration service (icing to half capacity of the bunkers), which are about 22 percent lower. Shipments that are accorded top or body icing service usually require, in addition thereto, the placing of ice in the bunkers in accordance with one of the various bunker refrigeration services described in appendix B. Green corn, for example, would require standard refrigeration service, while one of the lesser bunker refrigeration services would be used for some other commodities. When both top icing and bunker refrigeration services are rendered, the shipment is subject to the charges provided for each service.

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[2] The elements of expense that enter into the cost of furnishing refrigeration services fall into the following groups: Cost of ice in bunkers; supervision; switching to and from icing stations; bunker repairs, repairs of damage to cars caused by top or body icing; haulage of ice in bunkers; station and auditor's accounting cost; hazard; taxes; return on investment in facilities devoted to the performance of refrigeration services; and cost of precooling.

The charges for the various refrigeration services differ widely dependent upon the character of the service rendered. For the several types of modified services they range from about 15 to 85 percent of the charge for standard refrigeration between the same points, the lowest being for rule 242 service when 10,000 pounds of ice is used, and the highest applying in connection with shipments accorded rule 245 service with, for example, precooling, preicing and replenishing by the carrier, and re-icing three times in transit. For the maximal service, or standard refrigeration service, there are about six different sets of charges dependent partly upon the commodity involved, among the highest being for shipments of melons with icing to capacity of bunkers and preicing by the carrier.

Among the highest charges maintained by the carriers for refrigeration services are those from California group A origins, which include Los Angeles, to Boston, Mass. The maximum increase per car proposed for standard refrigeration from and to those points would amount to about $41 when no salt is used and approximately $62 when the authorized maximum ratio of salt is used, which is 30 percent of the weight of ice in the bunkers of the car. For the various lesser or modified services, the increases proposed from and to the same points would range from $4.37 to approximately $33. When salt is supplied by the carrier in icing or re-icing perishable shipments, it is subject to varying charges in addition to the stated refrigeration charge. The maximum addition is 50 percent of the stated charge for standard refrigeration, and lesser additions apply when less than the stated maximum of salt is used. The table below shows the present and proposed charges, per car, for standard refrigeration without salt from representative origins to representative markets; in addition to these charges as they may be affected by the amount of salt used, there is also, on shipments of citrus fruit from California, a charge of $6.61 when preicing is performed by the carrier:

From—	Standard refrigeration charges to—					
	Chicago, Ill.		New York, N. Y.		Boston, Mass.	
	Present	Proposed	Present	Proposed	Present	Proposed
Lake Wales, Fla	$90.60	$117.78	$83.48	$82.52	$68.77	$89.40
Harlingen, Tex	96.54	125.50	111.09	144.42	117.70	153.01
Los Angeles, Calif	101.83	132.38	125.64	163.33	132.25	171.93

The so-called perishable traffic embraces a large number of commodities, such as the numerous fresh vegetables; the various kinds of fresh fruits, including bananas and coconuts; berries; melons; fresh meats and packinghouse products; dairy products; eggs; fresh fish, includ-

ing clams, crabs, lobsters, oysters, and shrimp; ale, beer, and beverages. The annual volume, about 1,100,000 carloads, constitutes one of the most important segments of railroad traffic. Some of it is accorded ventilation or heater service during certain seasons of the year, but the great bulk of it moves under refrigeration. Illustrative of the traffic that would be affected by the increase proposed is the movement during the 1952–53 season of approximately 100,000 carloads of fresh fruits and vegetables from Florida, 40,000 carloads of fresh fruits and vegetables from Texas, 265,000 carloads of fresh fruits and vegetables from California and Arizona, 35,000 carloads of fresh fruits, vegetables, and fish from Oregon and Washington, and 351,000 carloads of fresh meats and packinghouse products between points in the United States.

In Ex Parte No. 162 *Increased Railway Rates, Fares, and Charges, 1946*, 266 I. C. C. 537, we authorized an increase of 15 percent, effective January 1, 1947, in the rates and charges for protective service. A like increase was also authorized in the final report in Ex Parte No. 166, decided July 27, 1948, *Increased Freight Rates, 1947*, 270 I. C. C. 403. In Ex Parte No. 168, *Increased Freight Rates, 1948*, 276 I. C. C. 9, we declined to authorize an increase in these rates and charges, pointing out that the evidence did not enable us to determine that the present charges, which included substantial increases effective in 1947 and subsequently, were insufficient to compensate the petitioners fully for all costs incident to furnishing these services. In that report it was further pointed out, at page 108, that the actual cost of ice in the year 1948 of $5.69 per ton was only 1 cent higher than the cost in 1946, and that the petitioners' estimated cost for the year 1949 of $6.13 per ton was 13 cents lower than the estimated cost for 1947 of $6.26, which the petitioners relied upon in Ex Parte No. 166.

In Ex Parte No. 175, *Increased Freight Rates, 1951*, 281 I. C. C. 557, we again declined to authorize a further increase in the charges for protective service, indicating that the evidence was not convincing that an increase in the rates and charges for that service was justified. In that report it was pointed out that the cost of ice in 1950, to the selected companies, of $5.84 per ton was only 16 cents higher than the cost in 1946, and that, since then, increases in the charges for protective service amounting to 32.25 percent had been authorized. It was further stated that the cost was also 29 cents lower than the estimated cost for the year 1949 of $6.13 upon which the same petitioners relied in Ex Parte No. 168.

At a joint meeting of the several railroad traffic executive committees representing practically all of the railroads of the country, held on October 3, 1951, it was concluded to conduct a comprehensive study

of the costs of providing refrigeration service for the purpose of determining whether the revenue therefrom was sufficient to cover the entire cost of performing the service, plus a fair return on the investment in facilities devoted to the performance thereof. The National Perishable Freight Committee, hereinafter called the freight committee, was given the responsibility of conducting the study.

Because of the magnitude of the task, the freight committee concluded that the study necessarily should be limited to ascertaining the total costs of ice and salt for all perishable traffic, and the total costs for the complete refrigeration service rendered for a representative number of shipments accorded bunker re-icing service subject to the section 2 charges. It covered the full year of 1951.

A report of the study was submitted to the traffic executive committees on September 30, 1952, which indicated that the service was being performed at a deficit in excess of $12,000,000 per annum based on the test made, which included a total of 13,975 carloads comprising the sample used in the study. It was estimated that the cost on shipments subject to the section 2 charges exceeded the revenue by 29.8 percent, and that the deficits on section 4 shipments would vary depending upon the particular element of expense involved and the territory in which the service is performed. After due consideration of the situation, the executive committees decided, on January 21, 1953, to proceed with the filing of the instant petition with us.

In the development of the data presented herein by the freight committee, the railroads and the Pacific Fruit Express Company, Fruit Growers Express Company, American Refrigerator Transit Company, Burlington Refrigerator Express Company, Western Fruit Express Company, and Merchants Dispatch, Inc., hereinafter referred to collectively as the carlines, were requested to furnish the freight committee certain information called for in an ice-cost formula prepared for that purpose. Generally, it provided for taking, at each station, the sum of the overhead costs, including a return on investment and working capital rental, and depreciation; the direct costs, which are the cost of ice purchased, harvested, or manufactured; and the indirect costs, which include labor on icing platforms, maintenance of facilities, taxes, insurance, et cetera, and dividing the total of these costs by the number of tons of ice placed in cars, to arrive at an average cost per ton of ice at the station. It differed somewhat from the formula developed by us in the second prior proceeding, in that (1) the company haul rate for transporting ice to platforms is increased to 10 mills per ton-mile; (2) interest on working capital is included in the cost study; (3) provision for Federal payroll and income taxes is made; and (4) return on investment is computed at 6 percent of

original cost without deducting accrued depreciation. In addition to these costs, the petitioners' study contemplated the development of data as to the other cost factors, hereinbefore enumerated, which were considered by us in our determinations in the prior proceedings.

The carlines were organized by the various railroads or groups of railroads with the object of rendering more efficient protective service. For example, the Pacific Fruit Express is owned jointly by the Southern Pacific Company and the Union Pacific Railroad Company, and the Fruit Growers Express is owned by 19 eastern and southeastern railroads. Those services are performed for the account of railroads under appropriate contracts. The six carlines and The Atchison, Topeka and Santa Fe Railway Company, hereinafter called the Santa Fe, which maintains a refrigerator department, provide by far the greater number of refrigerator cars in this country.

Every carrier listing 1 or more icing stations on its lines, and the 6 carlines, were requested to report the cost of all ice and salt supplied for refrigeration of perishable freight. A total of 1,678 locations on 124 railroads were covered by the more than 2,000 reports of the carriers.

Petitioners' traffic study.—In the study of the section 2 charges and costs, a total of 13,975 shipments subject to that section were selected as representative. They were selected from all shipments originated on the Santa Fe, the International-Great Northern Railroad Company (Guy A. Thompson, trustee), The St. Louis, Brownsville and Mexico Railway Company (Guy A. Thompson, trustee), and the other railroads that originate the great bulk of the perishable traffic. With the view of obtaining a sample approximating 10 percent of the shipments accorded bunker re-icing service, the procedure set up by the freight committee required the inclusion of selected shipments in refrigerator cars having numbers terminating in the digit 5. The selection of the origin and destination territories was designed to embrace a major portion of all refrigerated traffic. They are listed below:

Origin territory	Destination territory
rizona, Arkansas, California, Colorado, Idaho, Oregon, Texas, Utah, and Washington.	Missouri groups 1 (St. Louis) and 2 (Kansas City); Minnesota group 1 (St. Paul-Minneapolis); Illinois group 2 and Indiana group 4 (Chicago); Ohio group 3 (Cleveland), Michigan group 4 (Detroit), New York group 1 (Buffalo) and Pennsylvania group 1 (Pittsburgh), consolidated into one reporting group; New York group 3 (New York City), Delaware, the District of Columbia, Maryland group 3 (Baltimore), New Jersey group 1 (Jersey City), and Pennsylvania group 4 (Philadelphia), consolidated as one reporting group; Massachusetts group 1 (Boston).
ew York	Primary markets of Chicago and east, and St. Louis, Kansas City and St. Paul-Minneapolis, wherever records disclosed substantial movement.
labama, Florida, Georgia, North Carolina, South Carolina, Tennessee, and Virginia.	Same destination territory as from western origins, also Atlanta, Ga., Birmingham, Ala., and Cincinnati, Ohio, wherever records disclose substantial movement.

The sample was selected in the following manner by the designated originating carriers:

	Number of shipments
All section 2 shipments from selected producing areas	414,416
Shipments in cars with numbers ending in digit "5" selected therefrom	41,258
Shipments other than to major destinations, excluded	18,870
Leaving those to the major destinations	22,388
Rule 240, rule 242, and rule 243 shipments, excluded	8,832
Remaining shipments accorded bunker re-icing services from and to major origin and destinations	13,556
Digit 5 shipments on other lines, included	419
Total shipments in sample	13,975

Of the 13,975 section 2 shipments, 9,442, or 67.56 percent of the total, were accorded standard refrigeration service. For those shipments, the reported aggregate cost of ice, total refrigeration cost, total revenue collected, and the resulting deficits were $844,805, $1,348,872, $1,032,925, and $315,947, respectively. Each of the remaining 4,533 section 2 shipments was accorded one of the so-called modified services. For those shipments, the cost of ice, total refrigeration cost, and the revenue collected were $278,784, $428,275, and $336,043, respectively, indicating a revenue deficit of $92,232. The aggregate deficit of $408,179 on the selected section 2 shipments amounted to 29.8 percent of the aggregate revenue of $1,368,968. Segregated by origin territories, the resulting numbers of shipments were 9,443 from the West, 67 from New York, and 4,465 from the Southeast, and the percentages of the indicated revenue deficits were 31.6, 22.6, and 27.9, respectively. The cost data presented in this proceeding will be discussed hereinafter in greater detail.

The items of expense, as computed in the carriers' study, and the percentage relation of each to the total cost are shown in the table below:

Cost factor	Amount	Percentage of total
Ice	$1,124,301.35	63.3
Salt	73,529.26	4.1
Switching	135,448.93	7.6
Supervision	159,746.19	9.0
Ice haulage	163,500.91	9.2
Bunker damage	92,368.14	5.2
Station and auditors accounting	13,414.08	.8
Hazard	5,169.94	.3
Precooling	9,668.01	.5
Total	$1,777,146.81	100

A major portion of the 9,443 shipments from the West, principally from origins in Arizona, California, Colorado, Idaho, Oregon, Texas, Utah, and Washington originated on the contract lines of the Pacific Fruit Express and on the lines of the Santa Fe, which amounted to 6,597 and 2,477 shipments, respectively, or a total of 9,074. During the study period, a total of 247,851 section 2 shipments originated on the contract lines of the Pacific Fruit Express, of which 122,785 were accorded bunker re-icing service. The 6,597 selected shipments, or so-called digit 5 shipments, amount to 5.37 percent of the latter number. Table 1 below shows a segregation of that data by commodities. Table 2 shows similar information as to shipments originated on the lines of the Santa Fe. Table 3 shows like information as to the 86,937 section 2 shipments originated on the contract lines of the Fruit Growers Express, of which 4,482 digit 5 shipments amount to 7.57 percent of the total.

Commodity	Section 2 shipments	Shipments re-iced	Digit 5 shipments	Ratio digit 5 to re-iced shipments
Table 1				*Percent*
Citrus fruits	30,001	23,676	1,321	5.58
Grapes	17,523	17,207	1,013	5.89
Deciduous fruits, except apples	19,065	16,530	1,005	6.08
Apples	2,800	1,556	35	2.25
Melons	24,784	24,738	1,483	5.99
Lettuce	56,609	3,786	195	5.15
Potatoes	26,569	21,411	878	4.10
Tomatoes	10,227	3,410	168	4.93
Other vegetables	53,877	4,075	200	4.91
Frozen commodities	6,396	6,396	299	4.67
Total	247,851	122,785	6,597	5.37
Table 2				
Citrus fruits	24,501	18,347	876	4.77
Grapes	11,242	10,977	566	5.16
Deciduous fruits, except apples	3,333	3,230	192	5.94
Apples	none	none	none	
Melons	5,733	5,718	343	6.00
Lettuce	9,432	2	none	
Potatoes	15,107	13,345	414	3.10
Tomatoes	556	329	9	2.74
Other vegetables	8,383	516	21	4.07
Frozen commodities	1,341	1,341	56	4.18
Total	79,628	53,805	2,477	4.60
Table 3				
Deciduous fruits, except apples	9,540	9,539	732	7.67
Apples	444	150	1	.67
Citrus fruits	25,110	21,056	1,534	7.29
Pineapples	87	38	2	5.26
Evergreens	24	4	none	
Frozen commodities	1,879	1,864	163	8.74
Berries	35	35	1	2.86
Lettuce, escarole	2,207	853	86	10.08
Potatoes	5,745	2,296	156	6.79
Tomatoes	6,306	3,378	270	7.99
Other vegetables	35,111	19,711	1,520	7.71
Melons	12	3	none	
Fruit juices (not frozen)	424	290	17	5.86
Mixed fruits and vegetables	13	6	none	
Total	86,937	59,223	4,482	7.57

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The protestants generally contend that the sample obtained by the carriers does not meet the basic requirements of probability-sampling of the affected traffic, and is deficient and unreliable in various respects for the purpose intended in that, for example, it contains a disproportionately large number of shipments accorded standard refrigeration service, which amounted to approximately 67 percent of the total sample; that it does not include any shipments moved under any of the various modified services, such as rule 240, where no bunker re-icing service was performed; that it is overloaded with long-haul shipments; that it is not proportionate as to the numerous commodities affected; that it excludes many origin and destination areas; and that the year selected was not representative.

Evidence presented by the protestants in support of their position concerning the inadequacy of the carriers' sample traffic study includes, among other things, various comparisons of the results thereof with those taken from a 1-percent waybill analysis covering the same period, made for general use by the Commission's Bureau of Transport Economics and Statistics, hereinafter referred to as the waybill study. The sample in the waybill study was initially selected on the basis of waybills numbered "1" and those with the terminating digits "01."

The difficulties encountered in the use of these two samples are apparent when their basic methods of selection are considered. Although fully aware of the requirements in probability sampling of covering all the affected traffic, all the carriers, and all origin and destination areas, the petitioners found it expedient to limit their actual study to selected carriers and for selected traffic between a limited number of areas. This initial selection of carriers and areas was based upon judgment and so must be considered as a judgment sample from the total traffic of all carriers in all areas. The protestants argue that there is no method of proving the representativeness of a judgment sample since it is necessarily based upon opinion. After selecting the traffic, carriers, and areas to be covered, the petitioners then took a probability sample of that traffic by the described means of the terminating digit in the car number. They rely upon it as being representative of the total body of traffic. It should, and apparently did, produce a valid sample of the traffic thus selected. Further consideration will be hereinafter given to its representativeness of the total traffic.

In some of the protestants' comparisons, the annual volume of shipments of fresh fruits and vegetables and frozen food products originated or terminated on class I railroads in the United States is stated and segregated by commodities, and the relative proportions of the

total reflected by the samples in the carriers' traffic study and in the waybill study are given. Of the total shipments of apples originated, the respective relative proportions included in the carriers' traffic sample and in the waybill study are 0.42 and 0.91 percent, and of the shipments of potatoes they are 0.60 and 0.90 percent. With respect to other fruits and vegetables, the relative proportions reflected by the carriers' sample exceed those embraced in the waybill study in all instances, being most pronounced as to melons, fresh fruits, and frozen food products. The greatest disparity shown is in connection with fresh fruits n. o. s.,[3] not frozen, for which the respective proportions are 8.48 and 0.78 percent.

The protestants contend that the carriers' sample is overweighted as to fruits, melons, and frozen food products, which constitute approximately 66 percent of the total sample as compared with 32 percent of the total sample in the waybill study. They point out that, although vegetables comprise approximately 60 percent of the total volume of fruits and vegetable shipments, the proportion of vegetables reflected by the carriers' sample is only about 29 percent. They show, for example, that as to shipments of potatoes, which amount to about 31 percent of the total volume of fruits and vegetables terminated in the United States, the proportion of those shipments in the carriers' sample is only about 9 percent, as compared with 31 percent in the waybill study. The protestants argue that the disparities between the carriers' sample and that in the waybill study, which was obtained through the accepted method of probability-sampling over the whole body of traffic, indicated by the foregoing comparisons, support their contention that the carrier's sample is deficient and unreliable. Regarding this comparison, however, the samples gathered in the waybill study were not confined to shipments of fruits and vegetables accorded refrigeration service, but included many shipments moved under other types of services, and are not directly comparable as to the affected traffic, a notable example being potatoes which move also under ventilation or heater service.

Concerning the claim that the carriers' sample contains a greater portion of high revenue-deficit commodities than normally would be found in the section 2 traffic as a whole, there is shown in the table below a comparison of the distribution, by commodities, of the carriers' sample and the computed revenue losses thereon, and similar data as to shipments embraced in the waybill study, the latter being expanded 5.65 times to make them comparable as to volume.

[3] Not otherwise specified by name.

Commodity	Shipments in carriers' sample			Shipments in waybill study		
	Number of carloads in petitioners' sample	Loss by commodities	Loss per car	Carloads in waybill study	Waybill study expanded to number of cars in petitioners' sample	Loss on shipments distributed among commodities as in waybill study
Apples	131	$1,946.80	$14.86	93	525	$7,802
Melons	1,831	50,926.35	27.81	283	1,599	44,468
Total fruit	3,618	93,206.38	25.76	518	2,927	75,400
Citrus	3,731	87,605.55	23.48	611	3,453	81,076
Vegetables	2,521	39,905.08	15.83	256	1,447	22,906
Potatoes	1,294	64,046.12	49.49	447	2,526	125,012
Tomatoes	240	6,804.45	28.35	78	441	12,502
Frozen foods	568	62,902.58	110.74	186	1,051	116,388
Miscellaneous	41	835.95	20.39	1	6	122
Total	13,975	408,179.26	.....	2,473	13,975	485,676

Loss shown by petitioners 408,179
Amount of understatement of loss by petitioners based on this comparison 77,497

It will be observed from the foregoing table that the volume of frozen food shipments in the waybill study, said to be high-deficit traffic, is almost double that contained in the carriers' sample. The comparison also indicates that the cost data developed by the petitioners understates the costs as to those commodities.

It is stated that, although 29 percent of the melon shipments originate in the southern district, none of them is included in the carriers' sample. It appears that practically all shipments of melons from that district consist of watermelons, which do not ordinarily move under refrigeration. Cantaloups, which do normally require refrigeration, originate, for the most part, in the western district, and principally in the central western district where about 62 percent of the total volume of shipments originate. About 99 percent of the total shipments of melons included in the carriers' sample originated in the central western district, which the protestants suggest is disproportionately large for that district. It is not shown that a better proportioned sample would have produced materially different results as to unit costs from those indicated by the sample taken.

The protestants further observe that, although 20 percent of the total volume of grapes, peaches, and pears originates in the territory east of the Mississippi River, none of those shipments is included in the carriers' sample, but as to fruits n. o. s., not frozen, of which only about 10 percent originated in the southern district, the proportion from that district reflected by the carriers' sample is approximately 72 percent of the total volume. In another example they show that of the total volume of fresh vegetables, of which 76 percent originated in the western district and 21 percent in the southern district, the proportion from the southern district, picked up by the carriers' sample, is 80 percent, and only about 18 percent from the western

district. In summarizing their analysis, the protestants indicate that the carriers' traffic study is shown to be underweighted from the western district, extremely underweighted from the eastern district, and overweighted from the southern district.

In regard to the alleged overloading of the carriers' sample with long-haul shipments, the protestants show, for example, that 54.36 percent of the shipments in that sample originated in Florida or California and moved to destinations in New York or Ohio. Those from California to destinations in New York alone, amounting to 3,383 out of the total sample of 13,975 shipments, constituted 24.21 percent thereof, as compared with 353 carloads out of a total of 6,381 carloads in the waybill study, or 5.53 percent thereof. Of the total number of shipments in the carriers' sample, 43.46 percent terminated at points in the New York group, as compared with only 12.65 percent of those in the waybill study. As pointed out by the protestants, more than 90 percent of the shipments in the carriers' sample terminated in the eastern district.

In connection with the allegation that the carriers' sample is overloaded with long-haul shipments accorded standard refrigeration, there is the contention that such traffic shows large deficits in revenue, and that the inclusion of a disproportionately large sample of those shipments tends to produce an inflated factor for use in computing an average cost for national application to the whole body of section 2 traffic. Some of the protestants point out that the petitioners' cost study itself shows numerous instances where the revenue from some of the modified services yields profits. Pursuant thereto, the petitioners presented data depicting the revenue situation as to the various services rendered in the movement of 2,319 shipments referred to by the protestants. They show for the services rendered the distribution of shipments, and the computed deficits in percentages for full-bunker refrigeration, respectively, as follows: Standard refrigeration, 1,599 and 30.6; rule 239, 66 and 24.1; rule 245, 63 and 12.2; rule 247, 273 and 33.7; rule 249, 54 and 7.2; rule 251, 193 and 12.3; rule 252, 2 and 6.7; rule 254, 54 and 22.1; and rule 258, 7 and 23.6; or an average of 27.9 percent. For 54 additional shipments the deficits for half-stage refrigeration service averaged 42.9 percent, and for the composite of the 2,473 shipments the deficits averaged 28.9 percent. The deficits by commodities included in those shipments ranged from a minimum of 12.75 percent for apples to a maximum of 76.77 percent for frozen foods. In the establishment of a structure of charges of national scope, it is impracticable to accomplish uniformity in the relation to costs. The table below shows the distribution of those shipments, by services, and their percentage relations to the stated total compared with similar data compiled from the waybill study. It will be seen

from these comparisons that the relative distribution, among services, reflected by the carrier's sample approximates that in the waybill study.

Type of service	Number of shipments		Percent of total	
	Waybill study	Carriers' sample	Waybill study	Carriers' sample
			Percent	*Percent*
Standard refrigeration	1,738	10,417	70.3	74.6
Rule 239	71	461	2.9	3.3
Rule 245	66	546	2.6	3.9
Rule 247	279	953	11.3	6.8
Rule 249	54	311	2.2	2.2
Rules 251 and 252	195	823	7.9	5.9
Rule 254	55	325	2.2	2.3
Rule 258	15	139	.6	1.0
Total	2,473	13,975	100.0	100.0

In regard to the alleged disproportions in the carriers' sample as between the various refrigeration services performed, the protestants compare the proportions in that sample with those in the waybill study. The 9,442 shipments in the carriers' sample that moved under standard refrigeration, as hereinbefore noted, were 67.56 percent of the total sample, as compared with the 1,599 carloads out of the total of 6,381 in the waybill study, or only 25.06 percent thereof. As to other services, comparisons of the carriers' sample and the waybill study do not disclose substantial differences, percentagewise, between the result of the two studies, except as to rule 240 and services other than refrigeration. Included in the total number of shipments in the waybill study are 984 that moved under rule 240 service and 2,905 which were not accorded any refrigeration service, representing 15.42 and 45.43 percent, respectively, of the total, with no similar shipments in the carriers' sample. The inclusion of shipments not moving under refrigeration distorts the percentage relations of the various types of refrigeration under consideration.

Some of the protestants object to the exclusion of rule 240, 242, and 243 shipments from the carriers' sample, laying particular emphasis on the large number of such shipments, as indicated by the table on page 512 hereof, which approximated 43 percent of the total. Such shipments are iced initially by the shipper and are not re-iced in transit. Therefore, the amount of service given them and the revenue therefrom are minor compared with bunker re-iced shipments. Although the number of excluded shipments appears large, the revenues and costs are relatively small, indicated by the petitioners to be less than 2 percent of the total.

The 4 elements of cost of providing rule 240 service, for example, are hazard, station and auditors accounting, and bunker repairs,

whereas there are 9 elements of cost in bunker re-iced service. It is not apparent that the unit costs of providing the individual elements of service are different for the various services or that the exclusion of those shipments has any material effect upon the overall results under the carriers' sample. The percentages in the waybill study recomputed for each of the various services embraced therein, exclusive of rule 240 shipments and those not accorded refrigeration, are comparable with those shown in the carriers' sample as illustrated by the foregoing table.

With the advent of vacuum precooling and the described changes in packaging since 1951, there has been, as herein noted, an important shift from the use of modified services to standard refrigeration from origins in Texas, Arizona, and California, tending to minimize any deficiency of the traffic sample resulting from the exclusion of shipments not accorded re-icing in transit. A notable example is the shift from rule 242 service to standard refrigeration in the movement of lettuce and carrots from Arizona and California. There has been a sharp increase also in the use of half-stage refrigeration service, from a total of 13,008 shipments originated on the lines of contract carriers of the Pacific Fruit Express in 1951 to 26,811 in 1953 and 34,420 in 1954. The revenue deficit estimated by petitioners, in the rendition of that service, 44.8 percent, is represented as being relatively greater than that incurred in connection with any of the other services. With the increased volume of traffic accorded that service since 1951, they argue that the deficits must have increased.

Also concerning the distribution of shipments embraced in the carriers' sample, the table below shows recapitulations (segregated by lengths of hauls graduated by 500-mile blocks) of the volume of shipments, cost of performing the refrigeration services accorded, the revenue therefrom, the indicated loss in revenue, and its percentage relation to the total revenue for the respective mileage groups:

Distance	Number of shipments	Relation to total	Cost	Revenue	Loss	Relation of loss to total revenue
		Percent				*Percent*
Under 500 miles	69	0.49	$6,372.24	$5,356.71	$1,015.53	19.0
500 to 999 miles	1,028	7.35	111,413.37	87,482.11	23,931.26	27.4
1,000 to 1,499 miles	3,482	24.92	342,712.46	266,188.40	76,524.06	28.7
1,500 to 1,999 miles	594	4.25	72,904.15	51,512.09	21,392.06	41.5
2,000 to 2,499 miles	1,945	13.92	244,323.17	185,464.20	58,858.97	31.7
2,500 to 2,999 miles	2,335	16.71	321,268.03	239,594.20	81,673.83	34.1
3,000 to 3,499 miles	4,227	30.25	626,818.35	493,545.93	133,272.42	27.0
3,500 miles and over	295	2.11	51,335.04	39,822.93	11,512.11	28.8
Total	13,975	100.00	1,777,146.81	1,368,966.57	408,108.24	[1] 29.8

[1] Average.

Except for hauls under 500 miles and those within the 1,500 to 1,999 mileage group, the ratios of losses shown in the above table do not vary substantially. The results of the sample are relatively unaffected by short-haul traffic because the percentage of loss does not progress according to length of haul, as indicated by the foregoing table, and because there is relatively little section 2 traffic accorded bunker reicing service for hauls of less than 500 miles.

A tabulation for 1,000-mile groups shows the following results:

Distance	Number of shipments	Relation of loss to total revenue
		Percent
Under 1,000 miles	1,097	27
1,000 to 1,999 miles	4,076	31
2,000 to 2,999 miles	4,280	34
3,000 miles and over	4,522	27
Total	13,975	Average 30

The above figures indicate that, if a greater part of the sample had consisted of shorter movements, the percentage of loss would have changed very little. Considering its nationwide scope and the overall results of the traffic test, together with the variations in costs prevailing in the several groups through which the sample shipments moved, it does not appear that these variations exceed reasonable tolerances or that the costs for the longer hauls are improperly related to those for the shorter hauls.

In support of their position that the carriers' sample is not representative, the protestants presented data concerning the volume of deliveries of certain vegetables originated at points in Florida, Arizona, and California, and terminated at 100 specified cities (in 39 States, the District of Columbia, and inclusive of 5 cities in Canada), for each of the years 1931 through 1952, except vegetables from Arizona and California for the years 1937 through 1949. These cities embrace the 29 from Florida and 19 from California, used in the carriers' sample. From the Florida origins, the total of such deliveries to these 29 cities was 86.8 percent of the total to the 100 cities during the 16-year period covered, and from the Arizona and California origins to the 19 cities the total thereof during the 9-year period was 65.06 percent of the total to the 100 cities. These percentages indicate that a great preponderance of the movement of the commodities considered is to the destinations used by the carriers in their study.

Because of the freezing weather in Texas and the Kansas-Missouri flood conditions that occurred in 1951, together with subsequent changes in packaging and the advent of vacuum precooling, discussed

elsewhere herein in greater detail, it is claimed that the study period selected was not representative. The freeze caused some shrinkage in the volume of refrigerated traffic from Texas. Although there is some indication that the unit costs at certain stations are affected slightly by fluctuations in the volume of refrigeration operations, it is not indicated that the aforementioned shrinkage in traffic caused any appreciable change in the unit costs thereof.

The flood conditions caused delays to 61 shipments originated by the Santa Fe and 126 originated by the carriers served by the Pacific Fruit Express, which resulted in additional refrigeration expense. They represented about 2 percent of the study traffic of those carriers. If distributed over all that traffic, the additional ice consumed, as a result of the delays, would amount to only about 130 pounds per car. Any inflationary effect upon the overall costs caused by that additional expense would be extremely small. The petitioners maintain that operations in the railroad industry are such that no year is free from disruptions of some kind, and they cite typical examples of disruptions in other years from various causes, such as strikes and earthquakes. It does not appear that 1951 was an abnormal year for the purpose of the study.

Since 1951, as noted, there has been a substantial shift to the use of standard refrigeration as a result of the described changes in packaging and precooling, tending to enhance the representativeness of the sample as to that service, which the protestants contend was disproportionately large.

The petitioners' study afforded no mathematical chance for all of the railroads, all origin and destination areas, and all of the affected traffic to be included, and may have rendered it unrepresentative as to the whole body of traffic. The sample, however, was used principally to weigh unit costs for the purpose of determining an average percentage increase in refrigeration charges for section 2 traffic. The origin and destination areas selected produce and consume, respectively, a majority of all fruits and vegetables shipped, and a great preponderance of the movement of that traffic is over a relatively few routes. This concentration of movement and the resulting heavier volume of icing operations tend to produce lower unit costs than prevail in connection with the traffic to, from, or between the excluded areas where the volume of movement is much less. Thus, the conclusion is warranted that the computed costs of performing the refrigeration service required in the movement of the selected shipments do not overstate the average costs for the traffic as a whole.

Position of the protestants.—Of the numerous parties appearing in opposition to the proposed increased charges, evidence was presented

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by the Growers and Shippers League of Florida, Florida Fruit and Vegetable Association, Stokely Van Camp, Inc., National Association of Fruit Packers, Texas Citrus and Vegetable Growers and Shippers, F. H. Vahlsing, Inc., of Texas, the Western Growers Association, California Citrus League, California Grape and Tree Fruit League, Northwest Horticultural Council, Washington Potato and Onion Shippers Association, Northwest Fish Traffic Committee, the principal meatpackers, and the United States Department of Agriculture. This representation embraces practically all the growers, shippers, and processors of fruits, fruit juices and concentrates, vegetables, and frozen foods in Florida, Texas, Arizona, California, Oregon, and Washington, and fresh meats and packinghouse products throughout the country.

It is the position of these protestants that, considering the overall result of the present charges, there is no warrant for any increase therein, and that the charges proposed would affect adversely both the carriers and the shippers, it being their contention that the perishable traffic affected cannot bear an additional burden. In support of their position, they presented evidence concerning, among other things, the deteriorating economic condition of the producers, the shrinking per capita consumption of certain fruits and vegetables over a long period of years, attributed to the rising costs thereof, and the rapidly increasing volume of perishable traffic diverted to motor vehicles.

The Northwest Fish Traffic Committee and the Washington Potato and Onion Shippers Association would not oppose a reasonable increase shown to be justified upon substantial evidence. They do, however, request the elimination of certain alleged inequities in the refrigeration charges so that they may be on a competitive basis with other shippers in the same general area. For example, they claim that fresh fish from Prince Rupert, British Columbia, Canada, is given an advantage over that from the Puget Sound region, amounting to $30 or $40 per car, which would be $100 with the increase proposed. It is claimed that the Washington potato shippers are in a disadvantageous competitive position in relation to those in Oregon and Idaho because of the lower switching charge per icing in Oregon and the more favorable refrigeration charges from Idaho.

The Western Growers Association requests that the Arizona and California vegetable shippers be given the privilege of initially icing all cars in which their shipments are loaded, regardless of the type of service used, instead of being limited to those moving under certain of the modified services as at present. Somewhat similar requests were made by Texas and Florida shippers. The Texas shippers also urged that the carriers be required to make available to them rule 247

service maintained from other producing districts, which has subsequently been established. Consideration of such requests would unduly broaden the issues presented in this proceeding.

The Arizona and California shippers of vegetables and deciduous fruits also request that, if an increase is authorized, a holddown be prescribed sufficient to maintain their present competitive relation to other producing districts. Such treatment would be contrary to our indicated purpose in the determination of charges, as nearly as practicable, sufficient to cover the cost of providing refrigeration services. An adjustment of that nature, if appropriate, should be accomplished by modification of the line-haul rates.

An objection by the petitioners to the presentation of evidence on behalf of the Western Growers Association concerning car-mileage revenue received by the carlines or railroads for the use of their refrigerator cars was sustained by the examiner, and thereafter, upon request, counsel for those shippers was permitted to present proof for our consideration. It consisted merely of a statement as to the car-mileage revenue which the carlines would receive, for example, for a 2,000-mile round-trip movement of a refrigerator car at 4 cents a mile. Revenue received for car service is not a factor in the determination of reasonable charges for refrigeration service.

An overruled objection to the receipt in evidence of the petitioners' exhibits Nos. 4, 5, 6, 7, 8, 9, 19, 20, and 21, as amended, interposed by counsel for the Western Growers Association, on the grounds that he was not afforded a "reasonable opportunity to examine both the documents and the abstract," as contemplated by the provisions of rule 83 of our General Rules of Practice, is renewed on brief. Those exhibits were compiled from voluminous detailed cost data and are basic to the entire cost study. They were introduced at the initial hearing on December 9, 1933, but were not received in evidence until after the completion of cross-examination thereon during the following hearing more than 2 months later, and after the underlying data had been made available for examination. This procedure afforded all parties a reasonable opportunity to examine both the documents and the abstract. The ruling is sustained.

The section 2 charges, as noted, cover the several enumerated elements of expense, while the section 4 charges cover only the elements of ice, salt, and switching. The elements of expense for supervision, station and auditors accounting, and ice haulage, which are covered by the section 2 charges, but not included in the section 4 charges, amount to about 19 percent thereof. The section 2 shippers, generally, allege that the subjection of their traffic to charges for those elements without subjecting section 4 traffic to like treatment, causes unjust

discrimination against their traffic and gives undue preference of section 4 traffic.

After extensive investigations in the prior proceedings, we made definite determinations as to the costs of the several elements of expense and required the establishment of charges accessorial to the line-haul rates to compensate those costs on both section 2 and section 4 traffic. The section 2 charges became effective and have been applied for many years, but because our order as to the section 4 charges for the elements stated was stayed temporarily by the United States District Court for the Northern District of Illinois, and was subsequently vacated, those charges never became effective.

Concerning the allegation of discrimination, it is noted that the section 2 and section 4 charges do not apply on like traffic, and that, as to the alleged undue prejudice, there is no showing that any failure of the section 4 charges to cover the above-mentioned elements has caused, or is likely to cause, any disadvantage or injury to the section 2 traffic or any shippers thereof. Thus, the claim of unjust discrimination or undue preference is not soundly based. In these circumstances, any existing deficiency in the section 4 charges does not relieve section 2 traffic of the responsibility of bearing the full cost of that service and is not a consideration in the determination of the lawfulness of the increase proposed in the section 2 charges.

Cost of ice.—The cost to the carriers of supplying ice in the performance of refrigeration service is much the largest of the several elements of expense enumerated. It amounted, for example, to 63.3 percent of the total cost of the refrigeration service rendered in connection with the sample section 2 shipments, herein described, for which only "bunker ice" was supplied. So-called "body ice," and ice placed in bunkers by shippers is not included in this computation. The increases proposed are intended to cover the cost of both body and bunker ice supplied by the carriers.

Ice used by the carriers in rendering refrigeration service is either placed in the bunkers or bodies of refrigerator cars by themselves from supplies which they have manufactured, harvested, or purchased and stored in icehouses adjacent to icing platforms, or by contractors at a price per ton as agreed upon. The carriers manufacture ice at only a few points, the great bulk of their requirements being supplied by contractors who, in most instances, also place it in the bunkers. The harvesting of natural ice became uneconomical and has practically ceased.

The Santa Fe maintains its own refrigeration department. Other railroads' responsibilities as to refrigeration are discharged for their account, under contract, by carlines directly, or through them by inde-

pendent contractors. A substantial portion of the Santa Fe's service is performed also by independent contractors. Those contractors are generally commercial concerns doing a general ice business but, in a number of instances, under long-term contracts with the carriers, they have built plants within railroad yards. These plants are usually not so situated as to be suitable for serving the general public.

Some of the protestants introduced evidence purporting to show that, in many instances, the contract prices of ice were excessive. These prices per ton, which may vary widely as between individual stations, are represented by the carriers as being influenced by the conditions existing at each station, such as the volume of ice used, the investment in facilities, labor and other costs, ice shrinkage, and the required purchase of minimum quantities of ice at certain stations in order to insure the maintenance of supplies sufficient to meet all requirements. The failure to use the contract quantity may result from unforecastable conditions, such as crop failures and variations in the volume of consumption, or because of the necessity of providing compensation sufficient to induce contractors to invest in the plants and equipment necessary to meet the contemplated requirements where no other ice is available. Owing to inadequate supplies or variations in requirements at a station, there are instances when it must obtain ice from some other point. The evidence does not warrant a conclusion that the carriers have not exercised due diligence in negotiating the contracts.

Some of the shippers of fruits and vegetables contend that the computation of section 2 costs should be based upon the cost of ice on a statewide rather than a territorial group average used by the carriers. They computed costs for either all or representative shipments included in the carriers' sample from Florida, Texas, Arizona, and California using, in some instances, the same basis as was employed by the carriers and, in others, the actual cost of ice at each icing station. The computed deficit in revenue on 1,371 carloads of fruits and vegetables moved from Florida under standard refrigeration, including both those with salt and those without salt, using the group-average costs of ice, amounted to 21.3 percent. Similar computations for representative shipments given standard refrigeration service, or a modified service under rule 240, rule 251, or rule 252, showed revenue results ranging from a maximum profit of 9.12 percent to a maximum deficit of 28.91 percent.

Computations were made by Texas shippers as to 97 carloads of fruits and vegetables from that State, based on the cost of ice at individual icing stations, which indicate a revenue deficit of 29.7 percent as compared with a deficit of 40 percent indicated by the carriers'

computations. They also show computations, on the same basis, for a few shipments accorded standard refrigeration service, or rule 247 service, indicating deficits ranging from 6.79 to 7.57 percent.

The Arizona and California shippers presented recapitulations of the carriers' claimed costs of rendering the various refrigeration services for 2,197 carloads of citrus fruit from those States embraced in the carriers' sample, the revenue thereon, and the resulting deficits as shown in the carriers' computations. The respective deficits on shipments accorded standard refrigeration service, the various modified services, and on all the services used are indicated as 41.79, 15.34, and 28.07 percent.

In prescribing charges for ice on a group or zone basis, rather than by individual stations, we gave consideration to proposals of shippers similar to the contentions advanced herein. The cost data developed in the prior proceedings, like that herein, disclosed that, in numerous instances, the cost of ice varied substantially as between individual icing stations, but that the practical necessity of publishing charges on the group basis was recognized. The shippers' proposals as to the method of arriving at charges were regarded as being based upon an inadequate conception of the scope of the present-day refrigeration service. We then observed that the handling of refrigerated traffic should be considered as an integrated national service, and, when so considered, it was clear that charges should be fitted to its support by the use of the group basis, and that the shippers' proposals were incompatible with that view. No modification of that determination is warranted by the evidence in this proceeding.

The ice-cost formula is designed to develop at each icing station the cost of (1) ice per ton to the carrier, whether purchased, manufactured, or harvested, (2) moving ice to the icing platform, (3) operation of the icing platforms, and (4) placement of the ice in the refrigerator cars. It includes such elements as return on investment, depreciation, interest on working capital, cost of transporting ice to platforms, labor of icing cars, indirect costs, and taxes. The data reported by the carriers for the section 2 traffic sample were developed in accordance with that objective, and the procedures and resulting computations will be discussed in sufficient detail below.

The table below shows a summary of the reported aggregate tonnage and the computed cost of ice supplied in bunkers of cars, segregated by territorial groups, the average cost thereof per ton, the section 4 charge per ton, and the amount of the deficiency of such charge in each group. As to ice supplied in bodies of cars, it shows the total tonnage for all territories, total cost thereof, average cost per ton, the section 4 charge and the deficiency of the charge. The

areas embraced in the groups listed below are the same as those in the corresponding groups defined in the perishable protective tariff.

Territory	Amount supplied	Cost	Average cost	Section 14 charge	Deficiency
Funker ice	*Tons*		*Per ton*	*Per ton*	*Per ton*
Group 1	1,388,929	$7,042,866	$5.07	$4.04	$1.03
Group 2	184,096	1,601,172	8.70	4.96	3.74
Group 3	378,218	3,153,370	8.34	5.43	2.91
Group 4	447,633	2,555,990	5.71	5.49	.22
Group 5	272,506	1,887,356	6.93	5.62	1.31
Group 6	280,142	1,944,557	6.73	5.69	1.04
Group 7	729,262	5,145,240	7.06	5.75	1.31
Group 8	763,686	5,368,509	7.03	6.01	1.02
Group 9	285,616	2,217,761	7.76	6.28	1.48
Group 10	438,977	3,142,765	7.16	6.68	.48
Pody ice					
All territories	126,953	1,066,738	8.39	6.61	1.78
Total	5,305,018	35,126,324			

The cost of ice, computed by the carriers, includes an item representing 6 percent of original cost without deducting related depreciation reserves. In lieu of conducting valuation studies at each station, which they claim would have been too expensive, the petitioners presented data to show that reproduction cost less depreciation, computed on the basis of studies of the condition percent made by the Commission's engineering section, is greater than the original cost, which they used.

The protestants generally used a rate of 4 percent for return, pointing out that, over a long period of years, the carriers' average net return for all their operations has not exceeded that amount. In the restatement by one group, the base for return was original cost less accrued depreciation on the base of an engineering condition percent (56). The base used by the other group was original cost reduced by a depreciation reserve computed on the basis of a 4-percent depreciation accrual each year since acquisition of the property. The protestants contend that the 4-percent rate should be applied to a base which is the original cost of all property, other than land, less the cost of any of such property over 25 years old.

After careful consideration of all facts herein contained, including appreciation, depreciation, going-concern value, but excluding working capital, which is considered separately hereinafter, and all other matters which appear to have a bearing upon the valuation, the value as of December 31, 1951, for the purpose of this proceeding, of the property owned or used by petitioners for furnishing refrigeration services is found to be $22,484,000, and this amount will be used in the restatement of ice costs.

The return on facilities devoted to the performance of refrigeration service should not be expected to exceed the average rate for all opera-

tions of the class I railroads as a whole. The allowance for return in the restatement, hereinafter, will be computed at a rate of 4 percent after Federal income taxes. In computing the allowance for Federal income taxes, fixed charges were taken into consideration.

The primary purpose of any system of depreciation is to recover (or charge to cost of operation) the full original cost of property through periodic charges to operating expenses during the service life of the property. The rate of 4 percent used in the ice-cost formula contemplated the group plan of depreciation based on a weighted-average service life of 25 years, which is based on varying service lives. Under the group plan, property which is destroyed, retired, or otherwise withdrawn from service is taken out of the base on which the depreciation charge is computed, but all property which remains in service continues to be subject to depreciation regardless of the amount reflected in the depreciation reserve.

The protestants propose to modify the group plan used in the ice-cost formula by discontinuing depreciation on property older than 25 years. Under this modification the full original cost would be charged off on property which reaches 25 years of age, but on property with a shorter life which is retired before 25 years, the full original cost is never recovered through charges to operating expenses and the cost is understated. For this reason, under the group plan of depreciation, all property in service regardless of its age should continue subject to depreciation.

Included in the carriers' computations is an item of return, at the annual rate of 6 percent for one-sixth of a year, on the working capital said to be required in the performance of icing operations at each of the numerous icing stations maintained. The determination of the period used in the computations was based upon the representation that there is a time lag of approximately 2 months from the time an icing service is rendered until payment therefor is received from the connecting carriers. The amount of the working capital allocated to each icing station, reflecting one-sixth of the annual expense of operating the station, is designed to provide funds sufficient to cover operating expenses during those periods.

Under the established procedure of effecting payment to the participating carriers for icing service performed by them, the total refrigeration charge collected at the destination, less the amount accruing for ice haulage, station and auditors accounting, and hazard, which is retained by the delivering carrier, is credited by it to the originating carrier and paid to the latter in the next interline settlement. Thereafter, upon receipt of bills, distribution of portions of that residue is then made by the originating carrier to other participating carriers on the basis of the amounts published in the governing

division sheet. The amount deducted and retained by the delivering carrier is divided between the participating carriers in the same manner and upon the same percentage basis as are observed in dividing freight charges. Under these procedures, there is generally a lag of more than a month after delivery of a shipment before the participating carriers receive their respective proportions of the revenue.

Icing operations, including the furnishing of ice and salt, are performed largely by independent contractors under a contract with either the carlines or directly with the railroad, which names the unit prices for the service involved. The contractor is usually paid about the middle or latter part of the month following the month in which the service is rendered. There are longer lags in instances where any question is raised as to the accuracy of the bill rendered by the contractor and an investigation is required. It is not uncommon for Pacific Fruit Express to withhold payment to its contractors for as much as 2 or 3 months during such investigations.

The time in transit for a transcontinental movement from Lodi, Calif., to New York, for example, is usually about 10 days. The protestants point out that the maximum time elapsing from the time of shipment until the charge is paid at the destination is only about 14 days, and for shorter hauls, such as from Florida to New York, it may be only about 5 or 6 days. They urge that there is no justification for the imposition of any interest charge on working capital after the collection of the refrigeration charge at the destination. Of the numerous carlines and railroads reporting ice costs, only the Fruit Growers Express maintains a definite working capital figure for refrigeration expense in its accounting. The protestants generally contend that the period during which interest is imposed should not exceed one twenty-fourth of a year, which is the same as that used by the Fruit Growers Express in its accounting. The use of a longer period does not appear reasonable. A rate of 4 percent for a 2-week period will be used in the restatement, which is equivalent to adding the sum of $1,145,316 to the property value as a base for a return on working capital.

In computing the transportation cost for ice shipped to platforms, the petitioners used the published tariff charges when the movement was over the lines of a carrier other than the one using the ice, and 10 mills per ton-mile when it moved over the lines of the carrier using the ice, except that for those served by the Fruit Growers Express, a rate of 8.75 mills was used. For switching movements the tariff charge was used.

Some of the protestants maintain that, in many cases, such transportation of ice was in refrigerator cars which would otherwise have

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been returned empty, and that 1 mill per ton-mile would be a proper cost. They refer specifically to 9,836 tons of ice shipped from Chicago and Silvis, Ill., over the lines of the Chicago, Rock Island and Pacific Railroad Company to Dalhart, Tex., a distance of more than 1,000 miles.

The volume of shipped ice transported over the lines of the carrier using it is of appreciable importance at only a few points. Much of the shipped ice moves relatively short distances. In cases where the ice is shipped in refrigerator cars which would otherwise be returned empty, the cars receive the following services: (1) Selection of the car, (2) cutting the car out of the train if it is a return-empty movement, (3) switching the car to the iceplant for side-door loading, (4) holding it for loading of block ice, (5) switching it back to the yard, (6) classifying it as dead freight, (7) switching it to the train for line-haul movement, (8) clerical work to see that the car is properly cut out at destination, (9) classification and separation from other cars, (10) switching out of the train if necessary, (11) holding the car until it is unloaded, (12) switching it back to classification, (13) classification and restoration into a train, and (14) additional clerical accounting; also such items as damage caused by the transportation of block ice in the body of the car. It does not appear that the unit costs used overstate the average cost, and they will be used in the restatement.

The cost of labor includes the labor, on the icing platform, of putting the ice into the cars, but should not include any supervisory expense. Gang foremen who work along with their men properly are includible, but supervisors who do not physically handle the ice should be excluded, because their compensation is included in the item of supervision, a separate expense element. The contract price of ice generally includes delivery into the cars, in which case no separate labor cost is allowable.

An exhaustive investigation of this item, by certain of the protestants, developed numerous instances where supervisory salaries were originally included in the petitioners' computed cost of labor, such as at all Northern Pacific and Pacific Fruit Express icing stations. Pursuant thereto, corrected data were subsequently submitted by the petitioners, which eliminated practically all of the duplications by those carriers, and some of the errors appearing in the reports of other carriers. Other assailed items, which the petitioners considered correct, however, were not changed. For example, these protestants take the position that no separate item of labor for placing ice in cars was allowable at stations where all of the ice was purchased under contract, because it was included in the price of the ice. The petitioners point out that, in many instances, the contract price of the ice covers only delivery to the platform, and that there is, in addition thereto, the

labor cost of placing it in the car. There are several stations, mentioned by these protestants, where items of supervisory expense still remain in the corrected labor cost.

The corrected cost of labor eliminated practically all items of a supervisory nature, but failed to eliminate those at the following stations:

Station	Railroad	Type of work	Amount of expense
Pasco, Wash	Northern Pacific	Supervisory	$828.95
Spokane, Wash	do	do	1,264.35
Kansas City, Mo	Rock Island	do	1,010.25
Dalhart, Tex	do	Inspection	5,743.09
Blue Island, Ill	Indiana Harbor Belt	Supervisory	9,587.38
Total			18,434.02

It is concluded that, after the elimination of the amount shown above, the remaining expense will be approximately correct.

Indirect costs include maintenance of icing facilities, injuries to persons, insurance, telephone, heat, light, power, water, tools and supplies, taxes, and other expenses. Many of these items are relatively small and had minor effect upon the final results. Some carriers averaged their maintenance over a 3-year period. The protestants questioned this procedure as a means of obtaining normal maintenance expenses. This average may produce more normal current maintenance expenses than would be obtained by use of such expenses for a single year. In a study involving a large number of icing stations, the averaging process will have negligible effect upon final results.

Objection is made by the protestants also to the consideration of costs representing the ice department of the Santa Fe, which they consider improper. Expenses of the Santa Fe's ice department are allocated among manufacture, storage, and ice delivery. The icing facilities are operated by that department, whose employees consist of the superintendent and those in his Los Angeles office, plant superintendents, and those in local plant offices, none of whom physically place ice in cars. The petitioners contend that this expense is properly includible in the cost of ice because it relates to the management of ice plants and the physical handling of ice at platforms rather than supervision of refrigeration service. As already noted, the cost of labor includible in the cost of ice may properly include only the salaries of those who do the physical labor, and all others who are in a supervisory capacity are charged to the separate element of supervision. It is concluded that the Santa Fe's ice department expenses are a part of supervision, and the amount of such expenses, namely, $81,938, will be excluded from the restated ice cost.

The amount of income tax is computed to be that which will allow the payment of such income taxes and still leave the carriers with a net return of 6 percent on the investment in icing facilities. In their restatement of costs, the protestants used the same formula, but point out that a reduction in the return on investment and working capital will substantially reduce the amount of income tax. The inclusion of an amount for Federal income tax required for a net return of 4 percent is proper and will be allowed in the restatement.

The table below summarizes, by territorial groups, the cost of ice delivered in bunkers and bodies of cars, restated to reflect the adjustments contemplated by the above conclusions, together with the petitioners' computed costs:

Territory	Cost		Number of tons	Restated cost per ton
	Petitioners'	Restated		
Bunker ice				
Group 1	$7,042,866	$6,385,966	1,388,920	$4.60
Group 2	1,601,172	1,490,200	184,096	8.09
Group 3	3,153,370	2,912,804	378,218	7.70
Group 4	2,555,990	2,545,196	447,633	5.69
Group 5	1,887,356	1,800,480	272,506	6.61
Group 6	1,944,557	1,895,481	289,142	6.56
Group 7	5,145,240	4,964,404	720,262	6.89
Group 8	5,398,509	5,276,992	763,686	6.91
Group 9	2,217,761	2,064,811	285,616	7.23
Group 10	3,142,765	3,055,641	438,977	6.96
Total—Bunker ice	34,059,586	32,391,975		
Body ice				
Total—All groups	1,066,738	1,028,134	126,953	8.10
Total ice	35,126,324	33,420,109		

The present ice costs increased as hereinafter authorized would exceed slightly the foregoing 1951 restated costs in groups 1, 4, and 10, but when effect is given to the subsequent increases in purchased ice, indicated for 1952 and 1953, the resulting costs under the authorized increase would be lower in each group. The record shows that, in terms of the total tonnage reported in 1951, there was an increase since that year of at least 53 cents per ton, or 10.3 percent, in the cost of ice purchased by the petitioners.

Cost of salt.—The cost of supplying salt in bunkers of cars is one of the three elements of expense for which charges are specifically named in section 4 of the protective service tariff, and it is embraced also in the charges provided in section 2 thereof. The carriers show that the cost of salt supplied in connection with the sample shipments in 1951 amounted to $73,529.26, or 4.1 percent of the total of the various expenses incurred in the rendition of refrigeration service. A total of 380,130,055 pounds of salt was supplied that year by the carriers in

rendering refrigeration service, including both section 2 and section 4 shipments, at a total cost of $3,938,375, or an average of $1.04 per 100 pounds. The section 4 tariff charge was 99 cents per 100 pounds, indicating a deficiency, as to shipments subject to that charge, of 5 cents per 100 pounds. Since 1951, the prices paid by the carriers to their contractors for salt have been increased at many stations. It is proposed to increase the present charges for salt to $1.02 per 100 pounds.

At the various icing stations, small quantities of salt, in relation to the amount of ice used, are placed in the bunkers of cars, with many getting no salt at all. The proportion of labor expense and of platform expenses, such as interest on investment, maintenance and taxes, which are allocable to salt, therefore, is small in relation to that apportioned to ice. At some of the stations where substantial amounts of salt were used, an allocation of these expenses was made; but at many other stations it was considered impracticable to make any allocation, and only the purchase price and transportation expense of the salt were reported. No such allocation was made as to at least 34,000,000 pounds of salt used. For this reason the computed cost of salt omits much of the labor expense and most of its share of platform expense resulting in an understatement of costs. These expenses which were not allocated to salt, however, remained in the cost of ice and were included as part of that cost. There is insufficient data of record to permit any computation or estimation of such expense. In the adjustment of costs hereinafter, an amount of $1.04 per 100 pounds is used for the salt factor.

Switching.—The cost of switching refrigerator cars to and from icing facilities is, as hereinbefore indicated, one of the elements of expense incident to the rendering of refrigeration service for which charges were prescribed by us and for which charges are presently provided in sections 2 and 4 of the tariff. The present and proposed charges and their territorial applications are shown in appendix A hereto. The present switching charges of 60, 67, and 106 cents shown therein include increases authorized in Ex Parte Nos. 162 and 166 totaling 32.25 percent over the prescribed charges of 45, 50.5, and 80 cents, respectively. The respective increased charges here proposed are approximately 70, 72, and 72 percent over the present charges.

In their study of switching costs, the carriers concluded that a new and comprehensive study of such costs for the year 1951 would be impracticable and exceedingly burdensome. In lieu of a new study, the prescribed charges of 45, 50.5, and 80 cents were factored up to reflect the relationship ratio of 2.27 to 1 of yard transportation expenses per yard-switching locomotive-mile for the year 1951 to like expenses for 1932. These added expenses produced the respective amounts of

$1.02, $1.15, and $1.82, or the charges proposed. With no indicated intention that, as to the switching charges proposed, the petition should be amended, it was stated on behalf of the petitioners at one of the hearings herein that the index figure of 2.27 was based on a cost per yard locomotive-mile of $2.68 for 1951, erroneously calculated by using the total freight and passenger-yard locomotive-miles instead of only the freight portion which would have produced a figure of 2.43.

The charge of 45 cents prescribed for application at stations on the lines of the Santa Fe, Southern Pacific, Union Pacific, and the Western Pacific in Arizona, California, Nevada, and Oregon was based upon a stipulation by those respondents of the average of the costs of performing the services at those stations. The prescribed charge of 50.5 cents at stations in certain southeastern States was based on 1926 costs, and the prescribed charge of 80 cents for the rest of the country was based on weighted-average costs.

The stated index figures of 2.27 is based on incomplete costs for both years. Those not included are for maintenance and repair, depreciation, taxes, and return on investment of yard locomotives and yard tracks. Whether the inclusion of such expenses would have a material effect upon the index figure is not apparent. The figure is also deficient in that it fails to evaluate the element of technological change that has occurred during the past 20 years, and it does not give effect to the difference in productivity of the yard locomotives as measured by the cars handled per engine-hour. A switching cost per loaded-car comparison would be more suitable than a cost per engine-hour comparison where so much time has elapsed between the studies and the methods of operation may have changed to a considerable degree.

In their computation of costs the petitioners applied the switching-cost factor to all icings regardless of whether any switching was performed, which is in accordance with the Commission's formula. When the switching charges were originally prescribed, however, some of the icing docks were much shorter than the present facilities, and usually required a second spotting of the cars, while some of those presently maintained will accommodate the entire train. In a greater number of instances, therefore, re-icing of entire trains is performed without any switching, particularly at some of the important icing stations in the West.

The meatpackers show that the switching charges per icing, increased as proposed, would exceed, by amounts ranging from 11.5 to 32.5 cents, the prescribed charges plus the cumulative increases authorized for other switching services since June 30, 1946. They, and some of the section 2 shippers, contend that any increase authorized should be limited to such amounts as will reflect the changes in service since 1932, but that in no event should the increased charges exceed the

prescribed charges plus the cumulative increases. The evidence presented is insufficient to permit a determination of accurate costs, prerequisite to the authorization of the specified charges proposed. The prescribed charges plus the cumulative increases will be used in the restatement of these costs.

Supervision.—In discussing the cost of supervision in the second prior proceeding, at page 702 of the first report therein, we observed that, generally, the cost of supervision represented the outlay incurred for salaries, wages and office traveling expenses of officers, their clerks and attendants, general, district, and traveling agents, and icing foremen and inspectors, who devoted all or a part of their time to the handling of refrigerated shipments. We concluded that such outlay was an element of the cost of furnishing refrigeration services, and approved, as factors, amounts per icing, for the supervision of refrigeration services, of 82 cents in the territory west of the Mississippi River, 97 cents in the territory east of the Mississippi River and north of the Ohio River and the southern boundaries of Virginia and West Virginia, and 69 cents in the territory east of the Mississippi River and south of the Ohio River and the southern boundaries of Virginia and West Virginia. Under the authorized increases they have become 108, 129, and 91 cents, repectively.

As to supervision costs, the petitioners' study was confined to those of the Pacific Fruit Express and the Fruit Growers Express, and were computed, generally, in accordance with the method used in the aforementioned proceedings. Supervision costs of the Pacific Fruit Express were considered as representative of those west of the Mississippi River and the costs of Fruit Growers Express as representative of those in the East. The petitioners use average supervision costs per icing of $1.83 in connection with icings performed in the territory west of the Mississippi River, and $1.64 in connection with all icings performed in the territory east thereof instead of amounts for the two eastern territorial divisions described above.

No extra charge is collected for ventilation service; therefore, in theory, the line-haul rate covers the cost of supervision or inspection of a ventilated shipment. Thus, only the excess cost of supervision of a refrigerated over a ventilated shipment would represent the additional cost that should be borne by the refrigeration charge. It should include those costs in general account 111, Other Refrigeration Service, except those occasioned by bunker repairs, diversions, and precooling, and also a part of general expenses. It should include direct icing platform supervision because that is eliminated from the cost of ice, but it should not include supervision directly incurred in ice manufacture, storage, or harvesting since that is included in the cost of ice.

The petitioners allocated general expenses to refrigeration service on basis of the direct supervision costs in each service, whereas the protestants allocated them on a basis of the ratio of general expenses to all expenses, other than general. The protestants in computing the ratio, however, included the substantial expenses in account H, Ice and Salt, but in applying the ratio they omitted these expenses. When their method is properly applied, there is little difference in the results produced by the two methods.

An amount equivalent to supervision of ventilated shipments is deducted from refrigeration supervision costs in order to leave therein only the excess over the costs that would have been incurred if the shipments had moved in ventilation service. In restating supervision expense from the figures of Pacific Fruit Express, the protestants erroneously eliminated the total expenses in subaccounts 401-2, Supervision—Shipments, and 401-4, Inspection—Shipments, for the reason that these expenses for similar services were also included in subaccounts of account 501, Ventilation Service. This procedure excluded the total supervision for refrigeration service in lieu of only omitting an amount equivalent to ventilation supervision cost so that the excess would be included in the costs of refrigeration service.

No adjustment of the petitioners' computations of the cost of supervision appears warranted.

Haulage of ice.—The factor of ice haulage represents the cost of hauling ice in the bunkers of refrigerator cars, including additional train service resulting from the added weight of the ice hauled, and the occasional movement of empty cars out of line for the purpose of icing at origin. The amount of ice hauled in bunkers of cars, as used in the petitioners' computations, was determined by subtracting from the weight of the initial icing one-half the average weight of intermediate icings. An allowance is thus said to be made for normal meltage. The failure to consider the amount of ice remaining in the bunkers of cars at the destination, the protestants argue, results in an overstatement of the average weight of ice hauled. It is their position, apparently, that the rate of meltage between the last icing station and the destination is greater than that assumed in the carriers' computations. Such greater meltage could occur in instances where there is an extremely long haul from the last icing station to the destination, for example, in connection with a shipment moving from California to New York under one of the modified services with one re-icing at Laramie, Wyo.

The rate of ice meltage, which is fastest during the first day or two after the car is loaded, becomes progressively slower as the temperature of the lading is reduced. The rate of meltage, therefore, would become slower as the car approaches the destination. There are several

factors which affect the rate of ice meltage, such as the efficiency of the particular refrigerator car used, the season of movement, the outside temperature encountered, which may vary widely over different routes, the temperature of the lading, and the preicing of the car. In view of these circumstances, it clearly is not feasible to devise a method under which there would be an accurate determination of the average weight of the ice hauled in each instance. As to about three-fourths of the traffic there may be some understatements of the weight of ice hauled, particularly when standard refrigeration is used with re-icing at all regular icing stations, but with the probability of the overstatements and understatements being offset by each other, it does not appear that the overall results in the petitioners' computations are inaccurate to any important extent when the method is properly applied. It is indicated however, that there were some instances of improper application of the method in the computations, which resulted in the use of an inflated weight factor, such as those where the combined weights of the ice initially placed in the bunkers and that added in the retouching, before the car was loaded, were used as the weight of the initial ice. Thus, a weight in excess of the capacity of the bunkers was used, resulting in an overstatement of the basic weight factor.

The cost per ton-mile of hauling the ice is computed on the premise that bunker ice should bear only its proportionate part of those expenses chargeable to the movement of trains over the line that are increased by weight, and that it should not be charged with a share of any expenses that are not increased by weight or that are due to obsolescence or action of the elements and accrue whether or not any trains are run. The computed additional cost per ton-mile incidental to the haulage of ice in bunkers of refrigerator cars is 1.15816 mills for 1951 and 1.13852 mills for 1952. In computing the bare expense caused by the weight of ice in the bunkers of cars, the petitioners followed the Commission's formula in the second prior proceeding, with a few exceptions. These data were obtained from the annual reports of the 14 selected railroads [4] used in our computations in the cited proceeding.

Appendix C hereto shows the computations and the method observed by the carriers. Similar computations for the same years of 1951

[4] The Atchison, Topeka and Santa Fe Railway Company, the Chicago and North Western Railway Company, The New York, New Haven and Hartford Railroad Company, the Wabash Railroad Company, The Baltimore and Ohio Railroad Company, the Erie Railroad Company, The Pennsylvania Railroad Company, The Western Pacific Railroad Company, the Chicago, Rock Island and Pacific Railroad Company, the Missouri Pacific Railroad Company (Guy A. Thompson, trustee), the Southern Pacific Company, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, The New York Central Railroad Company, and the Union Pacific Railroad Company. These carriers and those listed in the footnote below are referred to herein by their short titles.

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and 1952 were also made for 20 of the principal carriers [5] of perishable shipments, indicated as 1.13953 and 1.13131 mills. In those computations an amount was added for payroll taxes to cover railroad retirement costs, which was not included as an expense item in the Commission's formula, it having originated subsequent thereto.

One-third of the maintenance-of-way expenses are assumed to vary with use. From this is deducted the terminal portion which is covered by the line-haul charge and by the factor of switching per icing. The remainder is the portion of maintenance of way affected by the weight of ice.

The maintenance-of-way equipment expenses remaining after deducting the portion assignable to terminal and to freight-train cars is considered 80 percent variable with weight including the weight of the ice. In the transportation group of accounts, only superintendance less the terminal portion, train fuel and power, water, lubricants, and other supplies for train locomotives were included as varying with the weight of the ice carried. A payroll tax of 6.5 percent of 60 percent of the sum of the above costs is added. The sum of these costs was divided by the gross-ton miles including locomotives, tenders, and cabooses, but excluding nonrevenue ton-miles and their share of tare weight ton-miles to produce a cost in mills per ton-mile.

The inclusion of all of the cost of superintendance related to line haul, except the transportation wages and salaries, does not appear justified because supervision is closely related to the personnel supervised as reflected in the wage and salary accounts. The payroll tax is applied to 60 percent of the expense included in this formula. It does not appear that so large a portion of this group of expenses is properly chargeable to wages and salaries. A rough test applied to expenses on the Santa Fe indicates that not more than 47.5 percent is assignable to payroll.

In the prior proceedings, the computed cost per ton-mile was increased by 49.265 percent to compensate for the additional train service caused by the weight of ice and extra hauls incidental to icing at originating points. These factors could not be measured but had to be assumed. To compensate for these expenses, the increase in the freight portion of railway operating expense per ton-mile of ice hauled in refrigeration service, determined to be 0.502463 mill, was increased to 0.75 mill, amounting to an increase of 49.265 percent in the Commission's formula.

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[5] Includes the railroads named in the preceding footnote, except the Western Pacific, and includes also the Chicago, Burlington & Quincy Railroad Company, The Chesapeake and Ohio Railway Company (for 1951 only), the Great Northern Railway Company (for 1952 only), the Illinois Central Railroad Company, The New York, Chicago and St. Louis Railroad Company, the Atlantic Coast Line Railroad Company, the Seaboard Air Line Railroad Company, and the Southern Railway Company.

The use of diesel power has resulted in substantial increases in the per train tonnage hauled. In some instances, the increases amount to as much as 40 percent over the tonnage hauled when the use of the aforementioned 49.265-percent increase was allowed. The assumption that the weight of ice in the bunkers of refrigerator cars might cause additional train service, therefore, was based on operating conditions materially different from those now prevailing. With the greatly increased tonnage that can now be handled in a train, and the improved operating efficiencies, the probability that additional train service may be required occasionally by the weight of the ice hauled has lessened substantially. The method of computing the cost of ice haulage, however, omits certain items of expense, such as the wages of traincrews, which would be incurred if additional train service were required as a result of the weight of ice in the trains handling the perishable traffic. The omission of these items acts as a substantial offset to the changes in the method of operation. The difference between the inclusion of these expenses and the reduction due to the changes in operation must be regarded as of a minor nature. No adjustment in the computed cost of ice haulage appears warranted.

Damage to bunkers and bodies of refrigerator cars.—To compensate for the expense of repairing damages found to result from bunker and body icing of refrigerator cars, we concluded, in the second prior proceeding, that a charge of $5 per car per trip for bunker repairs and a like charge for repairs to bodies of cars would be reasonable. Under the authorized increases, the factors became $6.61. In the initiation of their study in this proceeding, the petitioners concluded that a comprehensive study, required to determine the present costs of such repairs, would be impracticable. They seek no increase in the present factor of $6.61, which was used in computing the costs shown in their study. They, nevertheless, presented the results of a record maintained by the Fruit Growers Express of the cost of repairing refrigerating devices of its cars during the first half of 1953, which averaged $8.45 per car per trip.

Station and auditors accounting cost.—The inclusion of a charge of 35 cents per car per trip to cover the cost of accounting work in connection with icing service on refrigerated shipments, proposed by the respondents in the second prior proceeding, and unopposed by the shippers therein, was approved by us. Under the authorized increases it has become 46 cents. An increased factor of 96 cents per car per trip is used by the petitioners in computing the present costs shown in their study. It was arrived at by adjusting the original factor of 35 cents to reflect the increased accounting labor expense prevailing in 1951, by the use of a percentage relation of the straight time hourly pay of class B and class C railroad clerks in December

1951, to that existing in December 1930. The respective rates of pay were $1.792 and 64.2 cents, which produced a relation of 279 percent. The increased charge proposed for this element of expense substantially exceeds the total of 67.7 cents that would have resulted by applying to the prescribed charge of 35 cents the cumulative increases authorized for freight rates generally since June 30, 1946, which some of the protestants contend should be the maximum.

The protestants argue that the method of adjustment employed by the carriers is defective, in that it does not give effect to any increased efficiency, changed method, greater mechanization, or different requirements of service taking place during the 21-year period involved. In order to accord full weight to an adjustment based solely on salary comparisons, it requires an assumption that the clerk's productive efficiency remained constant throughout the entire period. Evidence of record indicates that, during that period, the railroads have made material changes and improvements in the operation of their offices, which has resulted in substantially greater efficiencies in the handling of clerical work, but it also appears that the complexity of the tariff provisions for the various refrigeration services has increased materially since the disposition of the prior proceedings, necessitating an increase in the clerical force having the responsibility of determining applicable charges.

Comparisons of the relation of the average clerk's total compensation with traffic units and operating revenue, presented by the protestants, indicate that the clerk's compensation per traffic unit rose 16 percent, and compensation of $1 of revenue decreased 3 percent, during the period from 1930 to 1951. These comparisons ignore the important changes in the nature of the traffic occurring during that period, which have resulted in a decrease in the relative number of less-than-carload shipments to carload shipments, and an increase in the lengths of haul per shipment. It appears that clerical cost varies more closely in proportion to changes in the number of shipments than with other measurements of service performed.

The evidence presented by the petitioners fails to show the 1951 cost of this element in the refrigeration charges. The prescribed charge itself, which merely has been factored up by the petitioners in the manner above described, has never been established as an actual cost. The proposed charge would disrupt the long existing relations resulting from the several prescribed component elements of the refrigeration charges. There is insufficient cost data to justify any charge for this element of expense in excess of the prescribed charge plus the cumulative increases authorized for general application on other traffic.

Hazard.—In the second prior proceeding it was determined that the aggregate costs per car per trip incurred by the respondents therein as the result of so-called hazard which were properly chargeable against refrigeration service on shipments under section 2 from Arizona and California, were as follows:

	Apples and citrus fruits	Deciduous fruits and melons	Vegetables
	Cents	*Cents*	*Cents*
Loss and damage claim payments	5	10	20
Cost of inspection at destination	15	15	15
Uncollectible refrigeration charges	1	1	1
Total cost of hazard per car per trip	21	26	36

The foregoing amounts were factors in the charges published pursuant to the findings in that proceeding. As a result of authorized increases, hereinbefore referred to, they became 28, 35, and 47 cents, respectively. The petitioners' computed costs as to hazard, shown in their study in this proceeding, are based on these amounts. They introduced no evidence in support of any further increases in such factors. Evidence presented by certain shippers as to claims paid for loss and damage affords no basis for any modification of these factors.

Precooling.—The practice of precooling refrigerator cars and the ladings was developed about 1930, and as to California shipments it became general in 1948. It is performed largely by the shippers. In California, precooling plants are operated at Colton and Los Angeles by the Pacific Fruit Express and at San Bernardino by the Santa Fe. The precooling operations at these points consist of placing cars loaded with fruit or vegetables on tracks adjacent to the precooling facility and forcing cold air through the lading for periods ranging from 4 to 12 hours, usually 8 hours. This service is performed in connection with shipments under rule 245, as well as those moving under standard refrigeration. In their precooling operations, the shippers also cool the lading by circulating cold air through the car, which is usually accomplished by the use of portable fans blowing air over ice into the car.

In the second prior proceeding, we found reasonable for the future a charge of $6 per car to cover the cost of precooling at Colton and San Bernardino when performed by a carrier, the Los Angeles plant not having then been put into operation. It is proposed to increase the present charge of $7.94 to $10.23, or by 30 percent, the same as proposed for other section 2 charges. The cost in 1951 of rendering precooling service at Colton, San Bernardino, and Los Angeles, as originally

developed by the petitioners and used in the computations, were $15.15, $9.33, and $11.77, respectively. At San Bernardino, for example, they were based upon an average ice equivalent of 3.08 tons per car at $3.03 per ton, the cost of manufacturing ice at that point. The adjustments in the cost of ice as restated herein have been applied to the precooling factor, resulting in a precooling cost per car of $13.33 at Colton, $7.54 at San Bernardino, and $10.40 at Los Angeles.

The protestants contend that, in addition to effecting a better arrival condition of the lading, precooling results in substantial economy in the use of bunker ice by retarding meltage. More than 98 percent of the fresh deciduous tree fruits and grapes that move to interstate markets by rail are precooled by the shipper either before or after loading. In recent years his average cost per car for precooling exceeded $40. At the time of precooling, a shipper may also fill up the depleted bunker at its own expense, and this is done to a large extent. If this were not done the ice would be replenished at the first icing station by the railroad at the shipper's expense, as provided in rule 246 of the tariff. The western shippers state that precooling and good refrigeration practices are particularly necessary in connection with their shipments, in order to enable them to compete in the eastern markets with shippers more advantageously situated in relation to those markets.

It is urged by the protestants generally that precooling is beneficial to the carriers as well as to the shippers. Prior to its development, about 50 percent of loss and damage claims were based on condition. One shipper shows, for example, that its claims do not now exceed 10 a year, as compared with approximately 1,000 to 1,500 a year prior to the use of precooling.

The vacuum process of precooling commodities prior to loading was not developed until 1952. Under this process the commodities are placed in a large metal tube, after which doors at each end are closed and a vacuum is drawn, reducing the temperature of the commodity to approximately 33 degrees or lower if desired. Lettuce, strawberries, celery, artichokes, spinach, sweet corn, cabbage, and endive can be vacuum cooled satisfactorily. The amount of bunker ice used for commodities that are vacuum precooled is substantially less than that for other commodities not vacuum precooled, but the rate of ice meltage in connection with shipments thus precooled is slightly higher than that for those accorded top or body icing.

The vacuum-precooling plants are centrally located in the heavier shipping areas, and have rail track facilities sufficient to accommodate from 16 to 30 or more cars, as compared with the widely scattered rail sidings and packing sheds formerly used, which accommodated only a few cars. This greater concentration of loading has resulted in

reducing the amount of switching per car previously required. All the vegetable-growing areas of Arizona and California, where there is substantial production of lettuce and the aforementioned commodities, are now served by vacuum-cooling facilities. Similar facilities are being constructed to serve the shippers in the Rio Grande Valley of Texas.

The table below is a restatement of the results of the petitioners' cost date, adjusted as hereinbefore indicated, as to the sample section 2 shipments.

Elements	Cost	Adjustment	Adjusted cost
Ice	$1,124,301	$55,091	$1,069,210
Salt	73,529		73,529
Switching	135,449	19,911	115,538
Supervision	159,746		159,746
Ice haulage	163,501		163,501
Bunker damage	92,368		92,368
Accounting	13,414	3,971	9,443
Hazard	5,170		5,170
Precooling	9,668	1,368	8,300
Total	1,777,146	80,341	1,696,805
Total revenues			1,368,968
Total loss			327,837
Percent of loss			23.9

Types of refrigerator cars and their utility.—In October 1954, the railroads had in service more than 120,000 refrigerator cars, refrigerated by means of ice and salt, and approximately 600 refrigerated mechanically, with about 200 more of the latter type on order. The mechanically refrigerated type of car was put into service originally in February 1949. The slow augmentation of these cars has been due to the necessarily long period of experimentation and the limited demand for them.

The charge for a shipment transported in a mechanically refrigerated car generally is the same as that for standard refrigeration, except that for frozen commodities it is 150 percent of that for standard refrigeration, which is substantially higher than any of the charges provided for the various modified services. The use of mechanical cars has been limited to shipments of frozen foods and frozen fruit-juice concentrates. From Florida, during the 1952–53 season, approximately 48 percent of the total volume of frozen-fruit concentrates by rail moved in mechanically refrigerated cars. The proportion during the 1953–54 season through April 17, 1954, increased to 65 percent, and will increase further when more cars become available.

It is indicated that a reasonably stable temperature of zero or lower is required to insure adequate protection of frozen concentrates in transit, and for that reason the mechanical car is used when available.

Mechanically refrigerated trucks also provide satisfactory temperatures. The minimum temperature attainable under ice and salt (30 percent salt) refrigeration is about 15° Fahrenheit. The refrigeration charge is increased 50 percent when 30 percent salt is used, or to the same level as applies on shipments in the mechanical cars. The total transportation charge by rail, including the increase proposed for standard refrigeration, would exceed the total transportation charge for frozen foods by truck from Winter Haven, Fla., to numerous important markets by amounts per 100 pounds ranging from 6 cents at Detroit, Mich., to 50 cents at Pittsburgh, Pa. The charge by truck generally covers both line-haul and refrigeration services. A substantial proportion of this traffic is moved by truck. For example, during the period from September 1, 1952, through August 31, 1953, approximately 39 percent of all the shipments of frozen citrus concentrates from Florida moved by truck. The number of mechanically refrigerated trucks in service is being increased substantially.

It is proposed to increase the section 2 charges applicable to shipments transported in mechanical refrigerator cars by 30 percent, or the same as is proposed for those transported in the ice-refrigerated cars. Although the cost of the mechanical cars is said to be about double that of the ice refrigerator cars, there is no evidence of record concerning the cost of rendering mechanical refrigeration service. Without such information, the lawfulness of the increase proposed cannot be determined.

Changes in packaging.—The packaging of certain vegetables is undergoing radical changes because of consumers' demands and the increasing costs of wooden crates. During and since 1952, in Arizona and California, and a year later in Texas, shippers have been changing to the use of fiberboard or cardboard cartons for packing lettuce and polyethylene bags for carrots. The principal Arizona and California producers of lettuce and carrots estimate that the use of the described packaging will expand to about 90 and 50 percent, respectively, of the total shipments of those commodities in 1954. It was reported in The Marketing News that, up to May 7, 1954, 91 percent of the lettuce shipped from Arizona was packed in cartons and moved under standard, full, or half-stage refrigeration. The percentage of such shipments from the Imperial Valley in California, up to April 2, 1954, was 83.33, and from the Salinas-Watsonville area in California up to September 24, 1954, it was 71. Changes in packaging are being extended also to other producing areas and to additional commodities.

The inability of the various types of fiberboard, cardboard, or plastic packages developed, thus far, to withstand the moisture from top or body icing necessitates the elimination of such refrigeration when those types of packages are used. In those instances the lading is

precooled by the shipper, in specially designed cooling plants, and generally is shipped under standard refrigeration. Many of the precooling plants use the vacuum-cooling process, hereinbefore discussed. Experiments are under way with a view to developing a container that will withstand the moisture from ice meltage.

The expanding use of the described packaging requires greater use of standard refrigeration. The protestants point out that the greater charge for such refrigeration results in a substantial increase in the per car revenue, that the required use of ice in greater volume results in a lower unit cost of providing refrigeration service, and that the elimination of top icing avoids damage to the floors and walls of cars ordinarily caused by meltage and shifting of ice. Another indicated benefit, accruing to the carriers as well as to the shippers, from the use of such packaging is its aid in maintaining the fresh condition of the vegetables and thus tending to stimulate the volume of sales and in turn the volume of movement and to minimize the damage claims.

Dieselization of motive power.—Dieselization of railroad motive power, in progress for more than a decade, has been completed by many of the carriers, and is in varying stages of completion on other railroads. Of the 41,604 units of motive power maintained by all the railroads of the country in 1951, 19,014 were diesel powered (including diesel-electric), or approximately 45 percent of the total. Their use over the routes over which the great bulk of the perishable traffic moves is almost, if not already, complete. The use of diesel power, improved rolling stock, and other operating efficiencies resulting in higher train speeds, have permitted substantial reductions in the time in transit of perishable shipments to the primary markets, and increases in the per train tonnage of as much as 40 percent in some instances.

Some of these improvements have been effected since 1951. For example, in 1953 the carriers operated an expedited service from origins in Florida to New York, N. Y., which permitted third-day delivery, and from California to Chicago, Ill., they established a schedule of 62 hours. Prior to the use of diesel power the respective normal schedules were about 5 and 10 days. At present, for normal service, guaranteed schedules of 3 and 6 days are maintained; during 1951, the guaranteed schedule from California to Chicago was 7 days. The faster schedules permit the elimination of some icing of shipments, as well as reductions in the consumption of ice en route. The regular icing stations on several of the more important routes from the West, aggregating 276 on August 21, 1948, had been reduced to 268 in August 1951, and to 253 in March 1954.

As to the operating economy of diesel-powered units, it is shown that their national average cost per locomotive-hour in yard service during 1948 was $5.8783, as compared with $10.5054 for steam locomotives, or slightly more than half of the latter.

Probable effect of increased charges upon traffic and producers.— Much of the evidence presented by the protestants relates to various economic circumstances affecting the producers and shippers of perishable commodities and the movement thereof, such as crop failures, spiraling costs of production and marketing of their products, unprofitable market prices received in many instances, constantly shrinking per capita consumption of certain commodities, and the increasing use of truck transportation.

In December 1953, the index of prices received for vegetable crops in Florida, constructed by the United States Department of Agriculture, was 223 as compared to an index of 284, the index of prices paid by the farmers for production items, interest, taxes, and wage rates. The percentage ratio of prices received to those paid was 79 for December 1953. In March 1953, it was 78 and in May it was 71. The prices received by the Florida farmers for vegetable crops have been below parity since 1948. Costs of marketing fresh vegetables also have been increasing, and taking a greater portion of the retail dollar than the farmer receives. During the past 4 years he has received from 37 to 46 percent of the vegetable retail dollar. In 1953 his share dropped from 42 percent in the first quarter to 33 percent in the fourth quarter. It is stated that many of the growers are losing money and that the proportion of those showing a positive net return and an average net return per acre have been decreasing since the 1948–49 season.

During the 1948–49 season, when prices received and paid were close to parity, more than half of the snap-bean growers, two-thirds of the tomato growers, and nearly all of the celery growers, contacted in a survey, reported profits ranging from $87 per acre for beans to $647 per acre for celery. In the 1951–52 season only 28 of the 72 snap-bean growers, 15 of the 57 celery growers, and 59 of the 112 tomato growers reported profits. The average per acre profit was smaller and the losses were larger for celery and tomato gowers. Substantially similar results were reported for the 1952–53 season. With the prevailing below-parity prices of fresh vegetables, the protestants urge that the Florida growers are in a relatively poor position to absorb any further increase in the cost of marketing their products.

The "on-tree" values per box in purchasing power of Florida oranges and grapefruit declined from $1.14 and $0.54, respectively, in the 1930–31 season to 40 and 25 cents in February 1954. The average price per box f. o. b. at point of origin of all Florida citrus fruit, packed, in-

creased from $1.65 in the 1910–11 season to a peak of $3.90 in 1927–28 and declined to $2.81 in 1952–53, with intermediate fluctuations ranging from a low of $1.51 in 1940–41 to a high of $3.48 in 1944–45. The disposition of Florida oranges amounted to 49,789,104 boxes in 1945–46 and 72,200,000 in 1952–53, or an increase of 23,010,896 boxes, but the disposition to commercial canneries included therein increased 26,647,524, which more than offset the increase in the total during that period. The production of citrus fruit in Florida has been in a pronounced upward trend for a number of years contrary to the trend of the production thereof in Arizona and California, which has been downward, as hereinafter indicated. Despite this increase in the movement from Florida, the railroads' proportion has declined substantially in recent years. An important factor influencing the diversion of this traffic from the rails is the accessibility by truck of the major markets, as well as other factors enumerated below.

Florida shippers submitted data showing the volume of movement of fruits and vegetables from Florida by rail, boat, and truck during the seasons 1931–32 through 1952–53. Of the total volume of citrus fruit shipped from Florida during 1931–32, aggregating 56,663 carloads, the percentages of the total transported by rail, boat, and truck were 79.4, 7.5, and 13.1, respectively. The respective percentages of 34,192 carloads of vegetables shipped during that period were 95.3, 00, and 4.7. During the 1952–53 season the respective percentages of 80,181 carloads of citrus fruit were 50.6, 0.3, and 49.1, and of 99,711 carloads of vegetables they were 45.9, 00, and 54.1. The movement by truck increased sharply during the last six seasons. The bulk of the truck movement is by exempt and private carriers. Some of the large shippers prefer rail transportation for their traffic and have resisted the use of trucks, but are being forced to use them to a greater extent for various reasons such as economy, competition with other shippers, and consumer demands. The buyers frequently send their own trucks for their requirements. Witnesses for the numerous large shippers represented testified, without exception, that any further increase in the cost of rail transportation unquestionably would cause an acceleration of the present trend toward the use of truck transportation.

Similar to the described situation in Florida, the Texas growers of fruits and vegetables are adversely affected by rising costs of production and the declining prices received for their products in recent years, and, in addition thereto, they are subjected to the disadvantage of crop failures caused by frost or drought and the greater distance to the primary markets, with the resulting greater transportation expense. The effect thereof is indicated in the volume of carload shipments of fruits and vegetables from Texas, which declined steadily in the period 1948 through 1952. The respective annual totals were 76,807, 52,078,

44,974, 26,707, and 38,444. Part of the decline in 1951 was due to the cold weather in the 1950–51 season (a freeze on January 29, 1951), which damaged the vegetable crop and destroyed most of the citrus fruit trees.

The highest prices received throughout the shipping season generally prevail for a short period at the beginning of the early-crop season in December and the first half of January. As to the prices received for representative commodities during the seasons 1951–52 through 1953–54, data submitted on behalf of the Texas shippers show that the prices received in 1953–54 were as much as 75 percent lower than those received in 1951–52. For example, the price of cabbage, f. o. b. Rio Grande Valley, ranged from $4.50 to $4.75 for 50-pound bags on December 31, 1951, $1.15 to $1.35 on November 27, 1953, and 70 to 85 cents on December 31, 1953. It is stated that the prices received by the farmers for their vegetables, in many instances, are not covering the cost of production. The production of cabbage runs from 3 to 6 tons an acre, and has sold as low as $4 or $5 a ton in the field. There were instances where shippers of potatoes from the Hereford, Tex., district received as little as $17 for a carload of potatoes in 1953.

The Texas shippers assert that they cannot absorb any further increase in the cost of marketing their products, and that if the proposed increase should be established they will be forced to seek more economical transportation or discontinue shipments. With that increase, the total rail transportation cost would generally exceed the present cost by truck and, like the Florida shippers, they claim that it would greatly accelerate the trend toward the use of trucks. The movement of their citrus fruit by truck during the respective seasons increased from 13.95 percent of the total volume, equivalent to 32,409 carloads, in 1944–45, to 55.16 percent in 1948–49, and 90.71 percent in 1953–54. Statistics on the total movement of vegetables by truck were not compiled prior to the 1951–52 season. Of the total volume of shipments of vegetables from Texas, in the 1951–52, 1952–53, and 1953–54 seasons, equivalent in carloads to 12,320, 15,950, and 20,922, respectively, the respective percentages thereof transported by truck were 17.79, 22.62, and 27.39.

The growers of fruits and vegetables in Arizona and California depend upon the primary markets in the East for distribution of the great bulk of their products. They, too, are seriously affected by the rising costs of production and the declining prices received for their products, and because of the greater distances to the principal markets, they are subject to the maximum disadvantage as to transportation costs. In order to compete with producers closer to the markets, they are constantly striving to improve the arrival quality of their products.

through the production and selection of the highest quality products for shipment and the use of adequate refrigeration service. The production of fruits and vegetables is the most important industry in those States. In 1953, the total number of shipments of vegetables, deciduous-tree fruits and grapes, and citrus fruits from those States amounted to approximately 168,000, 40,000, and 57,000 carloads, respectively.

Because of heavy losses sustained by Arizona and California growers of vegetables and melons, shipments of those products in 1954, it was estimated, would be substantially less than they were in 1953. During the 18 months just prior to March 1954, the average prices received by the growers were the lowest since 1937. The producers found it necessary to reduce the acreage of some of those crops very materially during that period. For example the acreage in carrots in the desert districts, Imperial Valley, and Arizona is down almost 50 percent, and some of that formerly used for growing lettuce has been planted in sugar beets and some is being used as pastures. A great many producers have been forced out of business.

Illustrative of the price situation, it appears that, during the fiscal year ended July 31, 1953, Harden Farms, a large producer of vegetables in California, sustained losses averaging more than $100 of each carload of vegetables shipped. Taking lettuce as an example, this producer states that its margin of profit in the popular selling price of 19 cents a head, is only 0.6 cent after the expense of growing and marketing the commodity, without any allowance for the cost of insurance, or any return on the investment or working capital. It estimates that the proposed increase in refrigeration charges would consume one-third of that margin. A higher selling price, it is claimed, would result in consumer resistance and a smaller volume of movement. The Arizona and California vegetable growers assert that it has become extremely difficult for them to compete in the eastern markets, and that they are steadily losing ground to competitors more advantageously situated, who generally ship by truck. Based on their 1953 volume of shipments, and using the refrgeration charges applicable to Detroit for the various services as an average, these shippers of fresh vegetables and melons estimate that the additional burden that would be imposed upon their shipments by the increase proposed would aggregate $3,584,812.

During the 1953–54 season there was some further increase in labor costs, with no reduction in the cost of materials used by the producers. For instance, some time prior to World War II the producers could be certain of breaking even or realizing a small profit on cantaloups sold at $1.25 a standard crate. At the present time, they must receive $5 a crate to break even. They claim that if the present structure of

prices continues for any appreciable length of time, the tonnage will diminish to such an extent that it will be limited to quantities sufficient to maintain them only as so-called luxury commodities. Any increase in the cost of transportation, they assert, would force further diversion to the trucks, or discontinuance of shipments entirely. Shipments of vegetables and melons by truck, in carlot equivalent from Arizona and California, increased from 7,590 in 1946 to 40,945 in 1953.

More than 73 percent of the fresh deciduous tree fruits, grapes, and berries that move by rail to interstate markets, move to the heavy consuming areas east of the Mississippi River. Over 61 percent move to markets east of Chicago, and more than 20 percent move to points in the greater New York area alone. The annual rail movement of these commodities, in carloads, from California increased from 89,178 in 1923 to 117,723 in 1928, declining steadily thereafter to 41,748 in 1944, increasing to 52,102 in 1947, and declining subsequently to 40,152 in 1953, or about 65 percent from the 1928 volume. During that period the population of the United States increased approximately 43 percent. This decline in movement by rail is attributed not only to diversion to trucks, but principally to declining per capita consumption, competition of producers closer to the principal markets, and to increased costs of marketing these products. It appears that where there has been a constant increase in the number of carloads shipped each year, as occurred in 1951 and 1952 over 1950, there has been a steady decline in the percentage of distribution of shipments in groups A and B involving the longest hauls and the highest transportation costs. New York is embraced in group A.

Because trees and vines are permanently planted to produce perennial horticultural crops, which take several years to bring into bearing at a relatively high cost of original capital investment, an adjustment in production cannot be accomplished without severe capital losses to the producer. Owing to the extreme perishability of the commodities and the long haul to the principal consuming markets, a substantial proportion of these crops move to markets on consignment for account of the shipper, and for that reason he is frequently forced to accept distress prices for them. The volume of movement by truck is increasing substantially, having increased from 1,431 in 1946 to 6,966 carlot equivalents in 1953. Movements by truck to destinations east of Chicago are small, but the length of haul is becoming longer each year.

The quantities of citrus fruit grown usually exceed the demands, giving rise to marketing problems. The citrus industry in Arizona and California is being operated under a marketing agreement program which has been in operation during most of the time since it was instituted under the Agricultural Act of 1933. For the 7 seasons

1946–47 through 1952–53 the percentage ratios of the "on-tree" prices to the parity prices, fixed by the United States Department of Agriculture, were 47, 42, 54, 51, 54, 57, and 39. Data were submitted on behalf of the citrus fruit growers, showing the "on-tree" farm value per acre of their products before depreciation of the t ees, but after deduction of the cultural cost thereof and an allowance for interest on the investment. On navel and miscellaneous oranges, for example, the income account for the 7 seasons showed losses per acre to the grower of $6, $129, $154, $49, $5, $24, and $67, respectively. On Valencia oranges, the respective losses were $173, $147, $216, $121, $88, $126, and $153. On lemons, the results during the respective seasons were losses of $91, $138, $46, and $46, and profits of $10, $120, and $138.

The canning of single strength orange juice and blended orange-grapefruit juice began about 1935 and became a part of the utilization pattern in the citrus-fruit industry. In 1947–48, a third product, frozen concentrated orange juice, was developed, and its production has increased very rapidly in the past 6 years. It takes substantial quantities of oranges from the available supplies, particularly, in Florida. The utilization of citrus fruits in the production of juices is much greater in Florida than it is in Arizona and California. For example, in 1952–53 only about 38 percent of Florida oranges and tangerines were shipped in the fresh state as compared with a volume from Arizona and California amounting to about 68 percent of the Valencia oranges and 88 percent of other kinds including navel oranges. The shipping weights of citrus-fruit products from 2,000 pounds of fresh oranges, for example, would amount to 1,056 pounds of natural-strength orange juice, or 288 pounds of frozen concentrate, or 400 pounds of bottlers' concentrated juice.

The movement of citrus fruit by truck from California, in carlot equivalents, increased from 7,137 in 1946 to 12,777 in 1953, or approximately 78 percent. A preponderance of the total movement of citrus fruits is to destinations east of the Mississippi River. The movement by truck, in carlot equivalents, of vegetables, citrus fruits, and melons from California increased from approximately 8,500 in 1946 to 60,600 in 1953.

The shippers of fruits and vegetables from Oregon and Washington also assert that any further increase in the cost of transportation of their products will cause an acceleration of the present trend toward the use of truck transportation. Illustrative of that trend, they show that 890 carlot equivalents, or 3.5 percent of the total volume of 26,556, in the 1942–43 season were moved by truck, and that the proportion by truck increased steadily thereafter to 5,327, or 28.5 percent of the total of 23,874 in 1953–54 (through March 20, 1954).

With the exception of cantaloups and watermelons, and frozen fruits, berries, and vegetables, the movement of fresh fruits and vegetables by rail has been in a downward trend since 1935. In 1951, the combined total of all section 2 shipments by rail was 274,405 carloads less than the number transported in 1946.

Approximately 2,000 carloads of frozen fish are shipped from the Northwest annually. Out of approximately 5,900,000 pounds shipped to Chicago in 1953, about 5,686,000 pounds moved by rail. During that year 53,000,000 pounds from other sections of the country moved by truck to the Chicago market. To New York in the same year, the movement from the Northwest was entirely by rail, while about 134,000,000 pounds moved by truck from other origins. These data, it is asserted, support the contention that insofar as fish is concerned, the greater burden of the increase proposed would be upon the Northwest shipper. In support of claimed economic ills of the domestic fish industry, the Northwest fish shippers point out that in 1953, 45.4 percent of the fillet fish consumed in the United States was imported, as compared with only 8.7 percent in 1939.

The movement of fresh meats and packinghouse products, being regular and in substantial volume, constitutes a very important segment of traffic, for which there is keen competition between the different modes of transportation. They are produced in almost every State of the Union, but the predominant movement is from origins in Central Freight Association and western trunkline territories. Data presented by the meatpackers show the total annual volume of movement of these commodities for the years 1940 through 1953. In 1940 the railroads received 59.9 percent of that traffic. Their proportion increased in each of the years during the war to a maximum of 80 percent reached in 1944. Thereafter, the railroads' proportion of the traffic declined steadily to 48.1 percent in 1953.

General discussion and conclusions.—As noted in prior proceedings, the carriers were required to establish and maintain charges for refrigeration service separate from the line-haul rates or charges on the lading thus serviced, and the charges prescribed for this service were designed to cover the cost thereof, plus a reasonable return on the investment in property devoted to the performance of such service. These charges, together with those voluntarily established subsequently for additional modified services, include only the respective increases of 15 and 15 percent authorized in Ex Parte Nos. 162 and 166, the further increases sought in Ex Parte Nos. 168 and 175 having been denied for lack of sufficient proof of any need therefor. In support of their petition in the instant proceeding, the carriers have presented

cost data, an analysis of which indicates a substantial deficit in the total of the revenue from refrigeration services as herein found.

As indicated by the foregoing discussion, there are complex factors in the numerous elements of expense incurred in the performance of refrigeration service, which tend to render an accurate determination difficult and susceptible of various analyses and conclusions, depending in part upon what may be considered sound formulas. Upon due consideration of inaccuracies and questionable items, and with appropriate modifications, as herein indicated, a finding is warranted that the petitioners are sustaining a total deficit exceeding 23 percent of the aggregate revenue accruing from the rendition of their refrigeration services.

The protestants take the position generally that, upon the evidence presented, there is no justification for any increase in charges for these services; that the perishable traffic affected cannot bear any additional burden; and that an increase would affect adversely both the carriers and the shippers.

The record is replete with evidence indicating a steady increase in diversions of the affected traffic from the railroads to trucks in recent years. It is also shown that in many instances, because of depressed market prices, the transportation charges were too high to warrant consignments, and substantial reductions in the volume of movement resulted. Although heretofore there has been applied the principle that the separately maintained refrigeration charges should cover the total cost of performing that service, the intense competition that has developed in the movement of this traffic, together with the unstable economic conditions in the industry, require consideration of the total transportation cost to the shipper and the effect upon the movement of the traffic in determining whether increases here proposed are just and reasonable.

The petitioners' study is not sufficiently comprehensive, and does not contain the necessary degree of exactness, to constitute sound support for the disturbances of the prescribed basic relations that would result from their proposal. The evidence is convincing that an increase, as proposed in the total cost of transportation to the shipper of commodities under refrigeration, would cause an acceleration of diversions of that traffic from the rails, or a loss of traffic otherwise, to such an extent as to result in a substantial reduction in revenue. It appears that a substantial amount of the affected traffic could not bear the increased cost of transportation which would result from general increases in charges for refrigeration services sufficient to cover the total costs thereof.

We find that an increase in the specified refrigeration charges in excess of 15 percent is not justified in the indicated circumstances. Based on the volume of refrigeration service rendered in 1951, an increase of 15 percent would yield additional annual revenue approximating $6,000,000. After the establishment of the increases herein authorized, the petitioners should conduct thorough and comprehensive studies that will permit sound determinations as to the effect of increases upon the movement of traffic, and as to any inequities or improper relations in refrigeration charges that may have developed from changed conditions since their original establishment.

We conclude that there is insufficient evidence for a finding as to increased charges applicable to shipments transported in mechanical refrigerator cars.

We further conclude that to enable the petitioning carriers, under honest, economical, and efficient management, to provide adequate refrigeration service and specifically to meet increased costs of rendering that service, the basic refrigeration charges may be increased as herein specified, and that the charges so increased will be just and reasonable for the future:

1. Except as otherwise provided in these findings on conclusions, all the basic charges of the petitioning carriers enumerated in appendix A hereto may be increased 15 percent within and between all territories. By basic charges are meant those now in effect, or now published to become effective but not yet effective, including increases made effective under authority granted in Ex Parte Nos. 162 and 166, and including charges that may be under investigation in other proceedings, as well as charges that have been prescribed by us, when and as such charges become effective, subject to any exceptions specifically made in the orders.

2. Charges for salt may be increased to $1.04 per 100 pounds.

An appropriate order modifying outstanding orders so as to permit the establishment of the increases authorized, will be entered.

ARPAIA, *Chairman*, concurring:

I agree that the increase in petitioners' charges for refrigeration services should be limited to 15 percent, but for reasons different from those expressed by the majority.

The majority believe that a finding is warranted that the petitioners are sustaining a total deficit exceeding 23 percent of the aggregate revenue received from refrigeration services. Nevertheless they limit the increase to 15 percent on the ground that a substantial amount of the affected traffic cannot bear anything higher. The effect of the majority report is to hold that there is justification for requiring the maintenance of noncompensatory charges for accessorial services.

It is my own view that charges for accessorial services should be fully compensatory. The Commission has never held otherwise. However, the petitioners' evidence falls short of justifying the full increase which they have requested. The traffic and cost studies, on which determination of the issue here presented principally depends, are inadequate. The traffic study, for example, contains a disproportionate number of shipments accorded standard refrigeration service; it does not include any shipments moved under any of the various modified services where no bunker re-icing service is performed, such as rule 240; and it is overweighted with long-haul shipments. It also excludes many origin and destination areas where perishable traffic moves. All these factors have a bearing on the accumulation of the aggregate costs which are compared with the refrigeration revenues. Furthermore, the petitioners did not develop unit costs reflecting current operating practices, such as switching of perishable traffic by types of service at the various icing stations. In spite of the deficiencies in petitioners' traffic and cost studies, unquestionably railroad costs, including cost of refrigeration, have continued to rise since the last increase in refrigeration charges was authorized in Ex Parte No. 166, *Increased Freight Rates, 1947*, 270 I. C. C. 403.

The 15-percent increase authorized by the majority is, in my opinion, the maximum justified on this record. I, therefore, concur in the result.

COMMISSIONER FREAS concurs in the result except with respect to mechanical refrigeration.

ELLIOTT, *Commissioner*, dissenting in part:

I agree with the above report except that I would approve an increase in refrigeration charges of at least 20 percent, and I would make such increased charges likewise applicable to shipments transported in mechanical refrigerator cars.

CLARKE, *Commissioner*, dissenting:

I am opposed to a uniform increase of 15 percent on each and every rate or charge published in section 2 of the Perishable Protective Tariff as authorized by the majority. It is a well-established principle that charges for refrigeration service should cover the cost thereof, plus a fair return, but no more. All of the earlier refrigeration decisions proceeded upon the logical theory that precise charges, based on costs alone, would be required. That particular theory is abandoned, however, by the majority.

It is my opinion that authorizing a flat percentage increase in charges for accessorial services, regardless of the results shown for particular commodities or particular classes of service, violates the basic precepts of reasonableness and lawfulness in the Interstate Com-

merce Act. It results in increasing charges which are already equal to or above total costs and overcharging certain commodities, or certain movements, or certain types of service, in order that other commodities or other movements or other types of service may be moved at a loss.

The majority states "In the establishment of a structure of charges of national scope it is impracticable to accomplish uniformity in the relation to costs." However, the present structure of charges, based on costs, is national in scope and, as indicated, it covers numerous specific services, commodities, and origin and destination groups. The very cost figures submitted by the carriers and used in the report, with certain adjustments, to show nationwide revenues, costs, and losses, were initially compiled from more specific data which show separately the costs and revenues for a particular type of service from a selected origin group to a selected destination group on a particular commodity. If such data is not sufficiently complete to arrive at separate increases for each service, or each commodity, it is due entirely to the failure of the carriers to develop such data. To reward them for that failure by allowing a blanket increase, knowing that it will result in certain commodities and certain services bearing more than their fair share of the costs involved, seems incongruous.

I would authorize increases only in those instances where it has been clearly shown that the charges made do not cover the cost of rendering the services involved and then no more than the amount necessary to close the gap between the specific charges and the comparable costs.

COMMISSIONER MITCHELL, being necessarily absent, did not participate in the disposition of this proceeding.

COMMISSIONER MURPHY did not participate in the disposition of this proceeding.

APPENDIX A

Statement showing the increases proposed by the petitioners in the charges published in sections 2 and 4 of Perishable Protective Tariff No. 16, Agent Jamison's I. C. C. No. 31

SECTION 2 CHARGES

Increase by 30 percent of refrigeration charges set forth in this section of the tariff, and any other charges provided in other sections that are based thereon, with the following exceptions:

Increase to $8.40 per ton, the present charge of $6.61 per ton for ice supplied in retop icing as published in Rule 248 of the tariff.

Increase the charges of $5.49, $5.69, and $6.01 per ton, presently published in Exception 7 of Rule 240, to $5.72, $6.73, and $7.03, respectively.

Increase to $1.02 per 100 pounds for salt, the present charge of $0.99 per 100 pounds published in Exception 7 of Rule 240.

No increase is proposed in the present charges provided for hazard, bunker, and body repairs, or for those provided in the following rules of the tariff:

Number	*Number*	*Number*
75 B–1	105 D	231 D
75 D–1	140	232
75 E	215 E	232½
75 F	215 Exception 3 (a)	237
75 J	215 Exception 3 (b)	246 B–1, Part 1
90 A	228 C	246 B–2, Part 1
		246 B–2, Part 2

SECTION 4 CHARGES

Increase all charges for services of initial icing and re-icing published in this section, and any other charges provided in other sections that are based thereon, as indicated below.

Territory	Charges per ton for ice supplied in bunkers of cars	
	Present	Proposed
California, except stations embraced below; Sparks, Nev.	$4.04	$5.07
Michigan (Northern Peninsula); Minnesota; Montana; North Dakota; South Dakota; Wisconsin	4.96	5.70
Colorado; Idaho; Oregon; Stations on main line of the Union Pacific Railroad Company as follows: Arcadia, Blakes Junction, Nyssa and Ontario; also stations on Brogan Branch, Brogan to Dennis, inclusive; Homedale Branch Dunaway to Napton, inclusive; Oregon Eastern Branch, Burns to Malheur Jct., inclusive; Homestead Branch, Blakes to Robinette, inclusive; Utah; Wyoming	5.43	8.34
Florida	5.49	5.72
California; Great Northern Railway Company, stations of Dolton Spur, Kalina Spur, Kandra, Lisky Spur, Stronghold, Suty Spur; Southern Pacific Company stations Copic, Dorris, Hatfield, Homestead, MacDoel, May, Mount Hebron, Somerset, Staley, Stronghold, Tuber, Tule Lake; Oregon; All stations except those named above; Washington	5.62	6.93
Alabama, except Mobile; Georgia; North Carolina; South Carolina	5.69	6.73
Illinois; Iowa; Kansas; Missouri; Nebraska	5.75	7.06
Connecticut; Delaware; District of Columbia; Indiana; Kentucky; Maine; Maryland; Massachusetts; Michigan (Southern Peninsula); Mississippi; New Hampshire; New Jersey; New York; Ohio; Pennsylvania; Rhode Island; Tennessee; Vermont; Virginia; West Virginia	6.01	7.03
Arizona; California; Stations in Coachella, Imperial and Palo Verde Valleys; Nevada, except Sparks	6.28	7.76
Mobile, Alabama; Arkansas; Louisiana; New Mexico; Oklahoma; Texas	6.68	7.16

CHARGE PER TON OF ICE SUPPLIED IN BODY OF CAR

All territories—Increase to $8.40 per ton for ice supplied in body of car, from $6.61 per ton presently published in Rule 400.

CHARGE PER 100 POUNDS FOR SALT

Increased to $1.02 per 100 pounds the charge of $0.99 presently provided for application on salt, except that the present charge applicable at Huntingburg, Ind., would be reduced to $1.02 per 100 pounds.

CHARGE PER ICING FOR SWITCHING

Territory	Charge	
	Present	Proposed
Arizona; California (except stations on the Modesto and Empire Traction Company); Nevada; Oregon	$0.60	$1.02
Florida; Georgia; North Carolina; South Carolina; Virginia	.67	1.15
Alabama; Kentucky; Louisiana east of the Mississippi River; Mississippi; Tennessee; Galveston, Tex.:		
On bananas, or bananas and coconuts mixed	.67	1.15
All other traffic	1.06	1.82
All other territory	1.06	1.82

APPENDIX B

Some of the various forms of refrigeration services provided in the numerous rules of the Perishable Protective Tariff

Standard refrigeration:

Dry car used with re-icing to capacity of bunkers at all regular icing stations, in transit.

Car pre-iced by carrier with re-icing to capacity of bunkers at all regular icing stations in transit.

Other refrigeration services:

Rule 239:

Pre-icing and replenishing by carrier with: (1) no re-icing in transit, (2) one re-icing in transit, (3) two re-icings, or (4) three re-icings in transit.

Rule 240:

Initially iced by carrier or shipper with no re-icing in transit.

Initially iced by carrier in transit with no re-icing in transit.

Rule 242:

Top or body icing by shipper at origins in western territory.

Rule 243:

Top or body icing by shipper at origins in eastern and southern territories.

Rule 245: (Applies from origins in Arizona and California.)

Precooled and pre-iced by shipper with: (1) no re-icing in transit, (2) one re-icing in transit, (3) two re-icings, or (4) three re-icings in transit.

Precooled and afterwards initially iced by carrier with: (1) no re-icing in transit, (2) one re-icing in transit, (3) two re-icings, or (4) three re-icings in transit.

Pre-iced and after loading precooled and replenished by carrier with: (1) no re-icing in transit, (2) one re-icing in transit, (3) two re-icings, or (4) three re-icings in transit.

Precooled by carrier with no re-icing in transit.

Rule 247: (Applies from origins in western territory.)

Initially iced by carrier or shipper with: (1) one re-icing in transit, or (2) two or more re-icings in transit.

Rule 248:

Retop iced by carrier in transit.

Rule 249: (Applies from origins in Arizona and California.)

Pre-iced or iced after loading by carrier with: (1) one re-icing in transit, (2) two re-icings in transit, or (3) three re-icings in transit.

Initially iced by shipper with: (1) one re-icing in transit by carrier, or (2) two re-icings in transit.

Rule 251: (Applies from origins in Florida group B.)

Initially iced by carrier with one re-icing in transit.

Rule 252: (Applies from origins in Florida group B.)

Initially iced by shipper with one re-icing in transit by carrier.

Rule 254: (Applies from origins in western territory.)

Pre-icing and replenishing by carrier with (1) no re-icing in transit, (2) one re-icing in transit, (3) two re-icings, or (4) three re-icings in transit.

Rule 255:

Half-stage refrigeration service.

Rule 258: (Applies from origins in eastern and southern territories.)

Initially iced by carrier with one re-icing in transit by carrier.

APPENDIX C

Table showing the petitioners' computations of the cost of haulage of ice for the year 1951 over the lines of 14 selected carriers

	Amount	Net amount applicable
1. Maintenance of way and structures	$572, 101, 178	
2. One-third of item 1, varying with use	190, 700, 393	
3. Deduct terminal portion, 33.4 percent [1] of item 2	63, 522, 301	
4. Net amount of maintenance of way and structures applicable as line haul		$127, 078, 092
5. Total maintenance of equipment	741, 857, 453	
Deductions:		
6. Freight-train cars—Repairs	306, 563, 596	
7. Freight-train cars—Depreciation	63, 291, 601	
8. Freight-train cars—Retirements	492, 675 (Cr.)	
9. Total for deductions	369, 362, 522	
10. Balance, item 5 minus 9	372, 494, 931	
11. Deduct from item 10, 33.4 percent [1] freight terminal expenses	124, 078, 062	
12. Line-haul portion, item 10 minus item 11	248, 416, 869	
13. Eighty percent of item 12, varying with use	198, 733, 495	
14. Deduct 15 percent of $25,305,332 overhead expenses for freight-train car repairs, depreciation, and retirements, charged to superintendence, included in item 5	3, 795, 800	
15. Net amount, maintenance of equipment applicable as line-haul expenses		194, 937, 695
Transportation expenses:		
16. Superintendence	42, 395, 266	
17. Deduct from item 16, 33.4 percent [1] freight terminal expenses	14, 121, 863	
Balance, item 16 minus item 17	28, 273, 403	
18. Fuel for train locomotives	195, 513, 583	
19. Train power produced	512, 667	
20. Train power purchased	5, 328, 651	
21. Water for train locomotives	9, 925, 345	
22. Lubricants for train locomotives	7, 441, 104	
23. Other supplies for train locomotives	3, 574, 537	
24. Total transportation expenses applicable as line-haul expenses		250, 569, 290
Summary:		
25. Total operating expenses applicable as line-haul expenses (items 4, 15, and 24)		572, 685, 077
26. Gross ton-miles including locomotives, tenders, and cabooses, but not including nonrevenue ton-miles and their proportionate share of tare weight of cars, locomotive, tender, and caboose ton-miles		*Gross ton-miles* 766, 865, 172, 000
		Mills per ton-mile
27. Increase in freight portion of railway operating expenses per ton-mile of ice hauled in refrigeration service (item 25 divided by 26)		0. 74679
28. Add 6.50 percent payroll tax on 60 percent of item 27		*0. 02912*
29. Cost of haulage of ice not including the cost of any additional train service		0. 77591
30. Add 49.265 percent [2] for additional train service and extra hauls at originating points		*0. 38225*
31. Total cost incident to the hauling of ice in bunkers of refrigerator cars		1. 15816

[1] Represents the ratio of yard proportion of accounts 202 to 221, plus accounts 377 to 391, inclusive, to the totals of these accounts, plus accounts 392 to 402, 412 and 413.

[2] To provide for the cost of added train-miles and terminal hauls not included in the calculations for year 1930, the cost of 0.502463 mill not including such cost was increased to 0.75 mill per net ton-mile, or 49.265 percent

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